



EAGLETON INSTITUTE OF POLITICS

Paul S. DeGregorio
United States Election Assistance Commission
1225 New York Avenue N.W., Suite - 1100
Washington, DC 20005
Fax: (202) 566-3127

June 8, 2006

Dear Chairman DeGregorio:

Karen Lynn-Dyson relayed the Commission's decision in your meeting of June 1 to take more time to consider how to proceed with the delivery of EAC research reports on provisional voting and voter identification.

The Eagleton-Moritz research team, of course, encourages the Commission's thoughtful consideration of the two reports, but we are mindful of the need to deliver revised documents that respond to the Commission's comments by the close of our contract on June 30th. We believe that if we receive the Commission's final comments on the Provisional Voting report by June 19 we will be able to complete any additional work that the Commission might request and incorporate the results in our final reports before the end of the contract period.

Based on suggestions raised at the meetings, we already plan to supplement the Provisional Voting report with some brief, additional information about the influence of the fail-safe ballot provisions of the National Voting Rights Act on the experience with provisional voting in 2004.

We understand that the Commission must submit the final draft Voter ID report to the same review process by your advisory boards as was followed with the Provisional Voting paper. We understand that step is a prerequisite for wider release. We would appreciate your advice on how to handle this review, given the rapidly approaching end of our contract.

We hope the commission will use both reports, as intended from the outset of this project, as the basis for recommendations for better, if not best, practices to the states. If the Commission cannot decide to issue such recommendations to the states, we hope it will promptly release the reports to provide the states and the broader elections community with this information, analysis and perspective on the issues.

We recognize, based on the reactions at the meetings of the Standards Board and, particularly, the Board of Advisors, that some of the findings, conclusions, and recommendations of the reports will be controversial with some of the Commission's constituencies. But we also believe, based on the comments of the Peer Review Group, the advisors assembled by the Commission, and our response to their critiques, that the reports are grounded on solid research by a well-qualified, nonpartisan team and that the reports will provide new information for the policy process. We believe this information will contribute to achieving the EAC mission of providing helpful information that the states may or may not choose to implement.

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The information in the reports can improve the policy process by raising the level of debate over increasingly volatile issues related to election administration. We believe our reports will prove useful to the states as they complete preparations for the 2006 elections. Moreover, the elections community is aware of this work, and awaits the analysis and conclusions.

We look forward to working with you to conclude this research in a way that will serve the public interest.

Very truly yours,

Thomas M. O'Neill
Project Director

022819

Karen Lynn-Dyson/EAC/GOV
06/28/2006 10:45 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Presentations at the EAC Governing Boards

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:43 AM -----



"Tom O'Neill"

05/22/2006 03:39 PM

To klynndyson@eac.gov
cc asherrill@eac.gov, jthompsonhodgkins@eac.gov
Subject RE: Presentations at the EAC Governing Boards

Karen,

The PowerPoint presentations for the Standards Board and the Advisory Board are attached.
See you tomorrow.

Tom O'Neill

-----Original Message-----

From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Monday, May 22, 2006 3:18 PM
To: [REDACTED]
Cc: asherrill@eac.gov; jthompsonhodgkins@eac.gov
Subject: RE: Presentations at the EAC Governing Boards

Hi Tom-

Just checking to see if your Power Point slides might be ready.

When they are, please send them on to me and hit Reply to All as Julie Hodgkins and Amie Sherrill (the Chairman's Special Assistant) would like copies before the presentation.

Thanks



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Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission

022820

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022821

**Briefing for
U. S. Election Assistance Commission
Board of Advisors**

May 24 , 2006



Provisional Voting

Online Recommendations



EAGLETON INSTITUTE OF POLITICS

Rutgers, The State University of New Jersey

MORITZ COLLEGE OF LAW THE OHIO STATE UNIVERSITY

Project Management Team

022825

Dr. Ruth B. Mandel, Director. Eagleton Institute of Politics
Board of Governors Professor of Politics
Principal Investigator and Chair of the Project Management Team

Edward B. Foley, Robert M. Duncan/Jones Day Designated Professor of Law
The Moritz College of Law
Director of Election Law @ Moritz

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The Moritz College of Law

John Weingart, Associate Director
The Eagleton Institute of Politics

Thomas M. O'Neill, Consultant
The Eagleton Institute of Politics
Project Director

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QUESTIONS RAISED BY THE EAC

- 1. How did states prepare for HAVA's provisional voting requirements?**
- 2. How did preparation and performance vary between states that had previously had some form of Provisional Ballot and those that did not?**
- 3. How did litigation affect the implementation of Provisional Voting?**
- 4. How effective was provisional voting in enfranchising qualified voters?**
- 5. Did State and local processes provide for consistent counting of provisional ballots?**
- 6. Did local election officials have a clear understanding of how to implement provisional voting?**

TO ANSWER THOSE QUESTIONS

- ☐ Surveyed 400 local election officials
- ☐ Reviewed the EAC's Election Day Survey
- ☐ Analyzed states' experience with provisional voting:
 - use of statewide registration database
 - treatment of out-of-precinct ballots
 - use of different approaches to voter ID
 - consistency
 - time period allowed for ballot evaluation
- ☐ Collected provisional voting statutes and regulations
- ☐ Analyzed litigation

Variation among the states

- ☐ In 2004 nationwide about 1.9 million provisional ballots cast, 1.2 million, or just over 63%, were counted.
- ☐ The percentage of provisional ballots in the total vote varied by a factor of 1,000 -- from a high of 7% in Alaska to Vermont's 0.006%.
- ☐ The portion of provisional ballots cast that were counted ranged from 96% in Alaska to 6% in Delaware.

Some sources of variation among states

Experience

Share of provisional ballots in the total vote was 6 times greater in states that had used provisional ballots before than in states where the provisional ballot was new.

Administrative Arrangements

Time to evaluate ballots

- States that provided less than one week counted an average of 35.4% of their ballots.
- States that permitted more than 2 weeks counted 60.8%.

Voter registration data bases

- States with voter registration databases counted an average of 20% of the provisional ballots cast.
- States without databases counted 44%.]



Variation within states

Rate of counting provisional ballots varied by as much as 90% to 100% among counties in the same state.

Resources available to administer provisional voting varied considerably among and within states.

The Election Day Study found that staffing problems appeared to be particularly acute for jurisdictions in the lowest income and education categories.

1. How did states prepare for HAVA's provisional voting requirements?

Most election officials received provisional voting instructions from state government. The type and amount of instruction received varied widely across the states.

Almost all provided training or written instruction to precinct-level poll workers on how to administer provisional ballots.

2. How did preparation and performance vary between states that had previously had some form of provisional ballot and those that did not?

18 states were new to provisional voting; 25 others had experience.

Local election officials in the “old” states felt more confident.

Provisional ballots in “old states” : more than 2% of the total vote, 4 times the proportion in “new” states.

Counting provisional ballots in the final vote, the “old” states averaged 58% nearly double the average (33%) in “new” states.

Question 3: How did litigation affect the implementation of Provisional Voting?

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Pre-election litigation clarified voters' rights to:

- **Sue in federal court to remedy violations of HAVA**
- **Receive provisional ballots, even though they would not be counted**
- **Be directed to the correct precinct**
- **Most pre-election litigation occurred too late to influence how states implemented provisional voting.**

4. How effective was provisional voting in enfranchising qualified voters?

Provisional ballots enfranchised 1.2 million voters, or 1.01% of turnout, who otherwise would have been turned away.

The number of voters who could be helped by provisional voting may be about 2.5 – 3 million. Provisional voting might be about 50% effective.

There is room for improvement.

Question 5: Did State and local processes provide for consistent counting of provisional ballots?

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Little consistency existed among and within states.

“New” states with registration databases counted 20% of the ballots cast. Those without databases counted more than double that rate (44%).

States that allowed out-of-precinct ballots counted 56% of the provisional ballots, 42% for in-precinct states.

States that provide a longer the time to evaluate provisional ballots counted a higher proportion of those ballots.

Less than 1 week:	58.6%
1 – 2 weeks:	65.0%
More than 2 weeks:	73.8%.

Question 6: Did local election officials have a clear understanding of how to implement provisional voting?

8 out of 10 county-level elections officials reported receiving instructions from their state government

4 out of 10 local election officials felt poll workers needed more training to understand their responsibilities

Objectively, how well did the process appear to be managed?

Lack of consistency among and within states indicates wide differences in understanding by election officials.

The number of states that have amended statutes on provisional voting to include poll worker training is a sign of dissatisfaction with the level of understanding in 2004.

RECOMMENDATIONS TO THE EAC

BEST PRACTICES

The importance of clarity

022838

EAC should emphasize the importance of clarity in the rules by which each state governs provisional voting. Does the provisional ballot system:

1. Distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate?
2. Place administrative demands on local jurisdictions that are realistically related to the staff and other resources available?
3. Display variation within the state great enough to cause concern that the system may not be administered uniformly from county to county?

Lessons of litigation for achieving clarity

022839

Look to litigation from the 2004 election to shape new statutes or regulations that will increase the clarity of provisional voting procedures, increase predictability, and bolster confidence in the system.

1. Litigation clarified the right of voters to receive provisional ballots, even though the election officials were certain they would not be counted.
2. Lawsuits prompted election officials to take better care in instructing precinct officials on how to notify voters about the need to go to the correct precinct in order to cast a countable ballot.

EAC should recommend to the states that they:

☐ Promulgate clear standards for evaluating provisional ballots, and provide training for the officials who will apply those standards.

☐ Provide materials for local jurisdictions to train poll workers on such procedures as how to locate polling places for potential voters who show up at the wrong place.

☐ Make clear that the only permissible requirement to obtain a provisional ballot is an affirmation that the voter is registered in the jurisdiction and eligible to vote in an election for federal office.

-- Provide poll workers the training they need to understand their duty to give those voters a provisional ballot.

Assess each stage of the provisional voting process

Before the election

- Clear information for voters on websites and in sample ballots.
- Training materials in every jurisdiction make poll workers familiar with the options available to voters.

At the polling place

- Design of provisional ballot
- Estimate supply of provisional ballots needed at polling places

Evaluating provisional ballots

- Define and adopt a reasonable period for voters who lack ID or other eligibility information bearing to provide it.
- A voter's provisional ballot should count so long as the voter cast that ballot at the correct polling site even if at the wrong precinct within that location.
- Follow written procedure or checklist to record why a provisional ballot is rejected.

Assess each stage of the provisional voting process

Post-election

Best practice is for states to consider how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available in presidential elections.

Provide timely information to voters about the disposition of their provisional ballot.

- Are they now registered for future elections?
- If not, what they need to do to become registered?

Conclusion

This systematic analysis constitutes a quality improvement program for provisional voting, one that holds promise for every state.

Briefing for

U. S. Election Assistance Commission
Advisory and Standards Board

DISCUSSION AND QUESTIONS

May 2006

022844

**Briefing for
U. S. Election Assistance Commission
Standards Board**

May 23 , 2006



Provisional Voting

Online and in-person recommendations



EAGLETON INSTITUTE OF POLITICS

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MORITZ COLLEGE OF LAW

THE OHIO STATE UNIVERSITY

Project Management Team

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Project Director

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- 2. How did preparation and performance vary between states that had previously had some form of Provisional Ballot and those that did not?**
- 3. How did litigation affect the implementation of Provisional Voting?**
- 4. How effective was provisional voting in enfranchising qualified voters?**
- 5. Did State and local processes provide for consistent counting of provisional ballots?**
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Variation among the states

❑ In 2004 nationwide about 1.9 million provisional ballots cast, 1.2 million, or just over 63%, were counted.

❑ The percentage of provisional ballots in the total vote varied by a factor of 1,000 -- from a high of 7% in Alaska to Vermont's 0.006%.

❑ The portion of provisional ballots cast that were counted ranged from 96% in Alaska to 6% in Delaware.

Some sources of variation among states

022851

Experience

Share of provisional ballots in the total vote was 6 times greater in states that had used provisional ballots before than in states where the provisional ballot was new.

Administrative Arrangements

Time to evaluate ballots

- States that provided less than one week counted an average of 35.4% of their ballots.
- States that permitted more than 2 weeks counted 60.8%.

Voter registration data bases

- States with voter registration databases counted an average of 20% of the provisional ballots cast.
- States without databases counted 44%.]

Variation within states

Rate of counting provisional ballots varied by as much as 90% to 100% among counties in the same state.

Resources available to administer provisional voting varied.

- The Election Day Study found that staffing problems appeared to be particularly acute for jurisdictions in the lowest income and education categories.

- Small, rural jurisdictions and large, urban jurisdictions reported higher rates of an inadequate number of poll workers

- Jurisdictions in poor areas reported more inactive voter registrations and more provisional ballots cast.

- Richer areas had more poll workers per polling place and reported lower rates of staffing problems per precinct.

1. How did states prepare for HAVA's provisional voting requirements?

Most election officials received provisional voting instructions from state government. The type and amount of instruction received varied widely across the states.

Almost all provided training or written instruction to precinct-level poll workers on how to administer provisional ballots.

- **Only about 1 in 10 made available to poll workers a voter registration database.**

- **Almost equally rare were training and written procedures for poll workers on the counting of provisional ballots.**

2. How did preparation and performance vary between states that had previously had some form of provisional ballot and those that did not?

022854

Local election officials in the “old” states felt more confident.

18 states were new to provisional voting; 25 others had experience.

“New” state officials felt:

-- Voters did not receive enough information about where to cast a provisional ballot in order to be counted.

-- More funding was needed to educate voters about their rights to cast a provisional ballot.

Provisional ballots in “old states” : more than 2% of the total vote, 4 times the proportion in “new” states.

Counting provisional ballots in the final vote, the “old” states averaged 58% nearly double the average (33%) in “new” states.

Question 3: How did litigation affect the implementation of Provisional Voting?

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Pre-election litigation clarified voters' rights to:

- **Sue in federal court to remedy violations of HAVA**
- **Receive provisional ballots, even though they would not be counted**
- **Be directed to the correct precinct**
- **Most pre-election litigation occurred too late to influence how states implemented provisional voting.**

4. How effective was provisional voting in enfranchising qualified voters?

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Provisional ballots enfranchised 1.2 million voters, or 1.01% of turnout, who otherwise would have been turned away.

The number of voters who could be helped by provisional voting may be about 2.5 – 3 million. Provisional voting might be about 50% effective.

There is room for improvement.

Legislative activity gives evidence that states were not satisfied with the effectiveness of their provisional voting systems.

Those voting with provisional ballots in states with experience were enfranchised more frequently than those in the “new” states.

Question 5: Did State and local processes provide for consistent counting of provisional ballots?

Little consistency existed among and within states.

The use of provisional ballots was not distributed evenly across the country. A few states accounted for most of the ballots cast.

Share of provisional ballots in the total vote was six times greater in experienced states than in new states.

More rigorous the state's Voter ID requirements the smaller the percentage of provisional ballots that were counted.

"New" states with registration databases counted 20% of the ballots cast. Those without databases counted more than double that rate (44%).

Question 5: Did State and local processes provide for consistent counting of provisional ballots?

022858

In-precinct versus out-of-precinct states had different outcomes.

States that allowed out-of-precinct ballots counted 56% of the provisional ballots.

States that recognized only ballots cast in the proper precinct counted an average of 42% of provisional ballots cast.

In "old" states, this difference was greater.

52% of ballots cast were counted in states requiring in-district ballots, 70% were counted in those allowing out-of-precinct ballots.

Question 5: Did State and local processes provide for consistent counting of provisional ballots?

States that provide a longer the time to evaluate provisional ballots counted a higher proportion of those ballots.

14 states permitted less than 1 week :	35.4%
15 states permitted 1 – 2 weeks:	47.1%
14 states permitted more than 2 week:	60.8%.

Effect felt most strongly in states where more than 1% of the overall turnout was of provisional ballots.

Less than 1 week:	58.6%
1 – 2 weeks:	65.0%
More than 2 weeks:	73.8%.

Question 5: Did State and local processes provide for consistent counting of provisional ballots?

Conclusions

States have latitude in how they meet HAVA requirements.

A considerable degree of variation among the states is to be expected.

If that variation stems from differences in political culture among the states, it is likely to persist. If it reflects a learning curve for "new" states, consistency may increase more quickly.

Question 6: Did local election officials have a clear understanding of how to implement provisional voting?

8 out of 10 county-level elections officials reported receiving instructions from their state government

4 out of 10 local election officials felt poll workers needed more training to understand their responsibilities

Objectively, how well did the process appear to be managed?

Lack of consistency among and within states indicates wide differences in understanding by election officials.

The number of states that have amended statutes on provisional voting to include poll worker training is a sign of dissatisfaction with the level of understanding in 2004.

RECOMMENDATIONS TO THE EAC

BEST PRACTICES

The importance of clarity

EAC should emphasize the importance of clarity in the rules by which each state governs provisional voting. Does the provisional ballot system:

1. Distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate?
2. Place administrative demands on local jurisdictions that are realistically related to the staff and other resources available?
3. Display variation within the state great enough to cause concern that the system may not be administered uniformly from county to county?

Lessons of litigation for achieving clarity

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Look to litigation from the 2004 election to shape new statutes or regulations that will increase the clarity of provisional voting procedures, increase predictability, and bolster confidence in the system.

1. Litigation clarified the right of voters to receive provisional ballots, even though the election officials were certain they would not be counted.
2. Lawsuits prompted election officials to take better care in instructing precinct officials on how to notify voters about the need to go to the correct precinct in order to cast a countable ballot.

EAC should recommend to the states that they:

- ☐ Promulgate clear standards for evaluating provisional ballots, and provide training for the officials who will apply those standards.
 - ☐ Provide materials for local jurisdictions to train poll workers on such procedures as how to locate polling places for potential voters who show up at the wrong place.
 - ☐ Make clear that the only permissible requirement to obtain a provisional ballot is an affirmation that the voter is registered in the jurisdiction and eligible to vote in an election for federal office.
- Provide poll workers the training they need to understand their duty to give those voters a provisional ballot.

EAC should recommend quality improvement

Begin a systematic quality improvement program by collecting data on the provisional voting process. Data collected should include:

- ☐ Specific reasons why provisional ballots were not counted
- ☐ Measures of variance among jurisdiction
- ☐ Time required to evaluate ballots by jurisdiction
- ☐ Provisional votes cast and counted by jurisdiction

Assess each stage of the provisional voting process

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Before the election

- Clear information for voters on websites and in sample ballots.
- Training materials in every jurisdiction make poll workers familiar with the options available to voters.

At the polling place

- Design of provisional ballot
- Estimate supply of provisional ballots needed at polling places

Evaluating provisional ballots

- Define and adopt a reasonable period for voters who lack ID or other eligibility information bearing to provide it.
- A voter's provisional ballot should count so long as the voter cast that ballot at the correct polling site even if at the wrong precinct within that location.
- Follow written procedure or checklist to record why a provisional ballot is rejected.

Assess each stage of the provisional voting process

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Post-election

Best practice is for states to consider how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available in presidential elections.

Provide timely information to voters about the disposition of their provisional ballot.

- Are they now registered for future elections?
- If not, what they need to do to become registered?

Briefing for

U. S. Election Assistance Commission
Advisory and Standards Board

DISCUSSION AND QUESTIONS

May 2006

DRAFT

**Deliberative Process
Privilege**

Report to the
U. S. Election Assistance Commission
On
Best Practices to Improve Provisional Voting
Pursuant to the
HELP AMERICA VOTE ACT OF 2002
Public Law 107-252

November 23, 2005

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Submitted by

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The Eagleton Institute of Politics, Rutgers, The State University of New Jersey

The Moritz College of Law, The Ohio State University

022870

Report to the
U. S. Election Assistance Commission

Best Practices to Improve Provisional Voting

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Background of the Research

This report to the United States Election Assistance Commission (EAC) presents recommendations for best practices to improve the process of provisional voting. It is based on research conducted by the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at Ohio State University under contract to the EAC, dated May 24, 2005. The research included a review and legal analysis of state statutes, regulations and litigation concerning provisional voting, a sample survey of local election officials, and a statistical analysis of provisional voting in the 2004 election. Also consulted as a basis for these recommendations were other studies, notably the EAC's Election Day Survey.¹

The Help America Vote Act of 2002 (HAVA) (Public Law 107-252) authorizes the EAC (SEC. 241, 42 USC 15381) to conduct periodic studies of election administration issues. The purpose of these studies is to promote methods for voting and administering elections, including provisional voting, that are convenient, accessible and easy to use; that yield accurate, secure and expeditious voting systems; that afford each registered and eligible voter an equal opportunity to vote and to have that vote counted; and that are efficient.

Section 302(a) of HAVA requires states to establish the process of provisional balloting by January 2004.³ The process HAVA outlined leaves considerable room for variation among the states, arguably including such critical questions as who qualifies as a registered voters eligible to cast a provisional ballot that will be counted and, arguably, in what jurisdiction (precinct or larger unit) that the ballot must be cast in order to be counted.⁴

The general requirement is that, if a registered voter appears at a polling place to vote in an election for Federal office, but the potential voter's name does not appear on the official list of eligible voters for the polling place, or if an election official asserts that the individual is not eligible to vote, that potential voter be permitted to cast a provisional ballot. In some states, those who should receive a provisional ballot include, in the words of the Election Day Survey, include first-time voters who cannot provide identification, as required under HAVA, and voters who were

¹ Appendix 1 provides detailed information on how this study classifies the states according to the characteristics of their provisional voting procedures and describes how the data used in the statistical analysis may differ from the data in the Election Day Survey, which became available as our research was concluding.

³ The Election Center's National Task Force Report on Election Reform in July 2001 had described provisional ballots as providing "voters whose registration status cannot be determined at the polls or verified at the election office the opportunity to vote. The validity of these ballots is determined later, thus ensuring that no eligible voter is turned away and those truly ineligible will not have their ballots counted." It recommended "in the absence of election day registration or other solutions to address registration questions, provisional ballots must be adopted by all jurisdictions." See www.electioncenter.org.

⁴ The 2004 election saw at least a dozen suits filed on the issue of whether votes cast in the wrong precinct but the correct county should be counted. One federal circuit court decided the issue in *Sandusky County Democratic Party v. Blackwell*, 387 F.3d565 (6th Cir. 2004), which held that votes cast outside the correct precinct did not have to be counted. The court relied on the presumption that Congress must be clear in order to alter the state-federal balance; thus Congress, the court concluded would have been clearer had it intended to eliminate state control over polling location (387 F.3d at 578). An alternative argument, that HAVA's definition of "jurisdiction" incorporates the broader definition in the National Voting Rights Act, however, has not been settled by a higher court. But for now states do seem to have discretion in how they define "jurisdiction" for the purpose of counting a provisional ballot.

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challenged at the poll.⁵ HAVA also provides that those who vote pursuant to a court order keeping the polls open after the established closing hour shall vote by provisional ballot. HAVA also requires election administrators to notify individuals of their opportunity to cast a provisional ballot.

Provisional Ballots in the 2004 Election

In the 2004 election, nationwide about 1.9 million votes, or 1.6% of turnout, were cast as provisional ballots. More than 1.2 million, or just over 63% were counted. Provisional ballots accounted for a little more than 1% of the final vote tally.⁶

These totals obscure the tremendous variation in provisional voting among the states. HAVA allows the states considerable latitude in how to implement provisional voting, including deciding who beyond the required categories of voters should receive provisional ballots and how to determine which provisional ballots should be counted. Six states accounted for two-thirds of all the provisional ballots cast.⁷ State by state, the percentage of provisional ballots in the total vote varied by a factor of 1,000, from a high of 7% in Alaska's to Vermont's .006%. The portion of provisional ballots cast that were actually counted also displayed wide variation, ranging from 96% in Alaska to 6% in Delaware. States with voter registration databases counted, on average, 20% of the provisional ballots cast. Those without databases counted ballots at more than twice that rate: 44%. (Or, as the Carter-Baker Commission report put it, "provisional ballots were needed half as often in states with unified databases as in states without."⁸)

The wide variations in the use of provisional ballots argue for the promulgation of best practices that states can use to determine how to make procedures clearer to both officials and voters could improve the implementation of provisional voting across the country.

One important source of variation among states was a state's previous experience with provisional voting. The share of provisional ballots in the total vote was six times greater in states that had used provisional ballots before than in states where the provisional ballot was new. In the 25 states that had some experience with provisional voting before HAVA, a higher portion of the total vote was cast as provisional ballots and a greater percentage of the provisional ballots cast were counted than in the 18 new to provisional balloting.⁹

⁵ The definition of who was entitled to a provisional ballot could differ significantly among the states. In California, for example, the Secretary of State directed counties to provide voters with the option of voting on a provisional paper ballot if they felt uncomfortable casting votes on the paperless e-voting machines. "I don't want a voter to not vote on Election Day because the only option before them is a touch-screen voting machine. I want that voter to have the confidence that he or she can vote on paper and have the confidence that their vote was cast as marked," Secretary Shelley said. See <http://wired.com/news/evote/0,2645,63298,00.html>. (Our analysis revealed no differences in the use of provisional ballots in the counties with these paperless e-voting machines.) In Ohio, long lines at some polling places resulted in legal action directing that voters waiting in line be given provisional ballots to enable them to vote before the polls closed. (Columbus Dispatch, November 3, 2004.)

⁶ These figures differ slightly from those in the Election Day Survey. Data used for this study include complete voting data for New Mexico, for which the Election Day Survey had only partial data, and vote totals for Pennsylvania, which was not included in the provisional voting analysis in the Election Day Survey. See the appendix to this report for a full explanation of the differences in data between this research and the Election Day Survey.

⁷ California, New York, Ohio, Arizona, Washington, and North Carolina. The appearance of Arizona, Washington and North Carolina on this list shows that the number of provisional ballots cast depends on factors other than the size of the population.

⁸ Report on the Commission on Federal Election Reform, "Building Confidence in U. S. Elections," September 2005, p. 16.

⁹ See the appendix for our classification of "old" and "new" states and explanation of why the total is less than 50.

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- The percentage of the total vote cast as provisional ballots averaged more than 2% (2.17%) in the 25 experienced states. This was 4 times the rate in states new to provisional voting, which averaged 0.47%.
- The experienced states counted an average of 58% of the provisional ballots cast, nearly double the proportion in the new states, which counted just 33% of cast provisional ballots.
- The combined effect of these two differences was significant. In experienced states 1.53% of the total vote came from counted provisional ballots. In new states, provisional ballots accounted for only 0.23% of the total vote.

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Those voting with provisional ballots in experienced states were enfranchised more frequently than those in the new states, another indication that there is room for improvement in provisional balloting procedures.¹⁰ That conclusion gains support from the perspectives of the local election officials revealed in the survey conducted as a part of this research. Local (mostly county level) election officials from "experienced" states were more likely to:

- Be prepared to direct voters to their correct precincts with maps;
- Regard provisional voting as easy to implement;
- Report that provisional voting sped up and improved polling place operations
- Conclude that the provisional voting process helped officials maintain accurate registration databases.

Officials from "new" states, on the other hand, were more likely to agree with the statement that provisional voting created unnecessary problems for election officials and poll workers.

If experience with provisional voting does turn out to be a key variable in performance, that is good news. As states gain experience with provisional ballots their management of the process could become more consistent and more effective over subsequent elections. Further information from the EAC on best practices and the need for more consistent management of the election process could sharpen the lessons learned by experience. The EAC should consider providing the "new" states with information on more effective administration of provisional voting. EAC could also consider convening a national meeting for state and county election officials to share experiences and best practices from their own jurisdictions.

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But the optimistic conclusion that experience will make all the difference may be unwarranted. Only if the performance of the "new" states was the result of administrative problems stemming from inexperience will improvement be automatic as election officials move along the learning curve. Two other possibilities exist. Current understanding of the provisional voting processes in use in 2004 is not sufficient to determine unambiguously which view is correct.

1. "New" states may have a political culture different from "old" states. That is, underlying features of the "new" states political system may be the reason they had not adopted some form of provisional voting before HAVA. The "new" states may strike a different balance among the competing objectives of ballot access, ballot security and practical administration. They may ascribe more responsibility to the individual voter to take such

¹⁰ Managing the provisional voting process can strain the capacity election administrators. For example, Detroit, counted 123 of the 1,350 provisional ballots cast there in 2004. A recent study concluded that Detroit's "6-day time frame for processing the provisional ballots was very challenging and unrealistic. To overcome this challenge, the entire department's employees were mobilized to process provisional ballots." (emphasis added.) GAO Report-05-997, "Views of Selected Local Officials on Managing Voter Registration and Ensuring Citizens Can Vote," September 2005.

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actions as registering early, finding out where the right precinct is, or re-registering after changing address. They may value keeping control at the local level, rather than ceding authority to state or federal directives. If the inconsistent performance in the "new" states arises out of this kind of political culture, improving effectiveness in the use of the provisional ballots -- as measured by intrastate consistency in administration--- will be harder and take longer to achieve.¹¹

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2. "Old" states may devote fewer resources to updating their registration files or databases because they are comfortable with provisional ballots as a fail safe way for voters with registration problems a way to cast a ballot. The adoption of statewide voter registration databases in compliance with HAVA therefore may reduce the variation in the use of provisional ballots among the states.

Other influences decreasing consistency among the states include:

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- The more rigorous the verification requirements of the voter's identity and registration status, the smaller the percentage of provisional ballots that were counted. Some states merely require a voter's signature, some match signatures, some require identity documents, others require an affidavit, and a few require photo identification.¹²

- In the 4 states that simply matched signatures, nearly 3.5% of the total turnout consisted of provisional ballots, and just under three-fourths of those ballots (73%) were counted.
- In the 14 states that required voters to provide such additional information as address or date of birth just over 1.5% of the total turnout consisted of provisional ballots, and 55% of those ballots were counted.
- In the 14 states that required an affidavit (attesting, for example, that the voter was legally registered and eligible to vote in the jurisdiction) just over one-half of a percent (0.6%) of turnout came from provisional ballots, and less than one-third of those (30%) were counted. (But note that HAVA requires all voters to certify that they are eligible and registered in order to cast a provisional ballot, which is functionally an affidavit. The 14 states described here used an explicit affidavit form.)
- In the 10 states that required voters to return later with identifying documents just under 1.5% of the total turnout came from provisional ballots, and more than half (52%) of these were counted. Voters apparently found this requirement less onerous than the affidavit, even though it required a separate trip to a government office.

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- Voter registration databases provided information that reduced the number of provisional ballots counted.¹³ In states using provisional voting for the first time, states with

¹¹ Despite differing political cultures among states and the latitude HAVA provides states, the statute does, indeed impose some degree of uniformity on issues that Congress thought essential. For example, before HAVA, took effect, "no state gave the voter the right to find out the status of their ballot after the election." Now all offer that opportunity. See Bali and Silver, "The Impact of Politics, Race and Fiscal Strains on State Electoral Reforms after Election 2000," manuscript, Department of Political Science, Michigan State University. Resisting HAVA's mandates through foot-dragging lacks any legitimate foundation in law or policy.

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¹² See Table 2 in Appendix 2 for information on the verification method used in each state.

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¹³ The Election Day Survey found that states using statewide voter registration databases reported a lower incidence of casting provisional ballots than states without voter registration databases, suggesting that better administration of voter registration rolls might be associated with fewer instances where voters would be required to cast a provisional ballot due to a problem with their voter registration.

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registered-voter databases counted only 20% of the ballots that were cast. States without such databases counted more than double that rate (44%). As HAVA's requirement for adoption of statewide databases spreads across the country, this variation among states is likely to narrow. Real-time access to a continually updated, statewide list of registered voters should reduce the number of provisional ballots used and reduce the percentage counted since most of those who receive them will be less likely to be actually registered in the state.

- States that counted out-of-precinct ballots counted 56% of the provisional ballots cast. States that counted ballots cast only in the proper precinct counted an average of 42% of provisional ballots.¹⁴

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- In experienced states, the disparity was even more pronounced; 52% of provisional ballots cast were counted in states requiring in-district ballots, while 70% were counted in those allowing out-of-precinct ballots.
- If all states had counted out-of-precinct ballots, perhaps 290,000 more voters would have been enfranchised across the country.¹⁵

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Variation With-in States

Not only was there little consistency among states in the use of provisional ballots, there was also little consistency within states. This was true in both new and old states. Of the 20 states for which we have county-level provisional ballot data, the rate of counting provisional ballots varied by as much as 90% to 100% among counties in the same state. This suggests that additional factors outside of the statewide factors analyzed here also influence the use of provisional ballots.¹⁶ Reacting to the lack of consistency within states, the Carter-Baker Commission recommended that "states, not counties or municipalities, should establish uniform procedures for the verification and counting of provisional ballots, and that procedure should be applied uniformly throughout the state."¹⁷

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Election Line reported that:

- In Ohio some counties counted provisional ballots not cast in the assigned precinct even though the state's policy was to count only those ballots cast in the correct precinct.

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¹⁴ The Election Day Survey concluded that: "Jurisdictions with jurisdiction-wide provisional ballot acceptance reported higher rates of provisional ballots cast, 2.09 percent of registration or 4.67 percent of ballots cast in polling places, than those with in-precinct-only acceptance, 0.72 and 1.18 percent, respectively. Predictably, those jurisdictions with more permissive jurisdiction-wide acceptance reported higher rates of counting provisional ballots, 71.50 percent, than other jurisdictions, 52.50 percent."

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¹⁵ This estimate is a rough approximation. States that recognize out-of-precinct ballots counted, on average, 56% of the provisional votes cast. Applying that ratio to the 1.9 million provisional ballots cast nationwide would result in 1.1 million provisional ballots that would have been counted if all states accepted out-of-precinct votes. States that did not recognize out-of-precinct ballots counted 42% of the provisional ballots cast, or about 813,000 ballots, for a difference of about 290,000 votes.

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¹⁶ For example, The Election Day Survey also found that "the reported rate of provisional ballots cast increases with population size, from 0.10 percent for voter registration in jurisdictions under 1,000 voting age population (VAP), to 2.51 percent in jurisdictions over one million VAP. It also calculated that, "The highest reported rate of counting provisional ballots was also among predominantly Hispanic jurisdictions, 79.30 percent, followed by predominantly non-Hispanic White areas, 62.60 percent; predominantly non-Hispanic Black communities, 58.60 percent; and predominantly non-Hispanic Native American jurisdictions, 48.70 percent.

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¹⁷ Report of the Commission on Federal Election Reform, "Building Confidence in U.S. Elections," September 2005, p.16. The report observed that, "...different procedures for counting provisional ballots within and between states led to legal challenges and political protests. Had the margin of victory for the presidential contest been narrower, the lengthy dispute that followed the 2000 election could have been repeated."

- Some counties in Washington tracked down voters who would otherwise have had their provisional ballots rejected because they had failed to complete part of their registration form, gave them the chance to correct those omissions, and then counted the provisional ballot. This would probably not have come to light except for the sharp examination caused by the very close election for governor.

Resources available to administer provisional voting varied considerably among and within states. The result is that differences in demographics and resources result in different experiences with provisional voting. For example, the Election Day Survey found that:

- Jurisdictions with lower education and income tend to report more inactive voter registrations, lower turnout, and more provisional ballots cast.
- Jurisdictions with higher levels of income and education reported higher average numbers of poll workers per polling place or precinct and reported lower rates of staffing problems per precinct.
- Staffing problems appeared to be particularly acute for jurisdictions in the lowest income and education categories. Small, rural jurisdictions and large, urban jurisdictions tended to report higher rates of an inadequate number of poll workers within polling places or precincts.
- Predominantly non-Hispanic, Black jurisdictions reported a greater percentage of polling places or precincts with an inadequate number of poll workers. Predominantly non-Hispanic, Native American jurisdictions reported the second highest percentage of staffing problems.

The conclusions to be drawn from these findings are clear. In voting districts with lower education levels, poverty, high mobility, and inadequately staffed polling places, the voting process is unlikely to function well. More people will end up casting provisional ballots. That makes the provisional voting process especially important. But if jurisdictions struggle with regular voting, how well are they likely to do with the more complicated provisional balloting process? In precincts where the voting process, in general, is managed poorly, provisional ballots cannot be expected to work much better. In these areas, the focus should be on broader measures to improve the overall functionality of struggling voting districts, although improving the management of provisional balloting may help at the margin.

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Of the 20 states for which we have county-level provisional ballot data, the rate of counting provisional ballots varied by as much as 90% to 100% among counties in the same state. This suggests that additional factors outside of the statewide factors analyzed here also influence the use of provisional ballots.^{18¶}

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The Election Day Study found that jurisdictions with lower education and income tend to report more inactive voter registrations, lower voting turnout, higher number of provisional ballots case, lower average number of poll workers per polling place and greater percentage of inadequately staffed polling places. These differences in demographics and resources produce different experiences with provisional voting.^{19¶}

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Effectiveness of Provisional Voting

The certainty of our conclusions about the effectiveness of provisional voting is limited because of a fundamental challenge of methodology and the lack of important information. An ideal assessment of how well provisional ballots served the needs of voters and the public interest requires knowing the decisions of local officials in 200,000 precincts on how to inform voters about provisional voting; their performance in providing a provisional ballot to those qualified to receive one, and their decisions whether to count a provisional ballot. And information needed about the eligibility or registration status of provisional voters is also not available.

We see no automatic correlation between the quality of a state's voting system and either the number of provisional ballots cast or counted. Low numbers could reflect an accurate statewide voting data and good voter education. Or they could suggest that provisional ballots were not made easily available. High numbers could be seen as signifying an effective provisional voting system or a weak registration process. But we do know that in 2004 provisional ballots enfranchised 1.2 million citizens, who would otherwise have been turned away from the polls.

Not knowing the total number of registered voters who might have voted but could not makes a precise, quantitative estimate of the effectiveness of provisional voting impossible. The Cal Tech – MIT Voting Technology Project, however, estimated that 4 – 6 million votes were lost in the 2000 presidential election for the reasons shown in Table 1 below. The estimate is an approximation, but it may provide data good enough for a general assessment of the size of the pool of potential voters who might have been helped by the provisional ballot process.

Estimates of Votes Lost in 2000 Presidential Election

Votes Lost (Millions)	Cause
1.5 – 2	Faulty equipment and confusing ballots
1.5 – 3	Registration mix-ups
<1	Polling place operations
?	Absentee ballot administration

Table 1 Cal Tech – MIT Voting Technology Project Estimates

4 – 6 million votes are lost in presidential elections due to the causes shown in the table. Registration mix-ups (e.g., name not on list) and polling place operations (e.g., directed to wrong precinct) are the causes most likely to be remedied by provisional voting.

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The table shows that the universe of voters who could be helped by provisional voting might be 2.5 – 3 million voters. A rough estimate of the effectiveness of provisional voting in 2004, then, might be 40% to 50% (ballots counted/votes lost). Whatever the precise figure, it seems

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The table shows that the universe of voters who could be helped by provisional voting might be 2.5 – 3 million voters. A rough estimate of the effectiveness of provisional voting in 2004, then, might be 40% to 50% (ballots counted/votes lost). Whatever the precise figure, it seems reasonable to conclude that there is considerable room for improvement in the administration of provisional voting.

Legislative Response

Indeed, several states²⁰ came to the conclusion that the administration of their provisional voting procedures needed to be improved and amended their statutes after the 2004 election. State legislation adopted since the election points to particular areas of concern.

Not enough time to examine and count the provisional ballots. Florida, Indiana, Virginia, and Washington all have clarified or extended the timeline to evaluate the ballots. But taking more time can prove a problem, particularly in presidential elections with the looming deadline to certify the vote for the Electoral College.²¹

Lack of uniform rules for counting ballots and effective training of the election officials in interpreting and applying those rules to determine the validity of ballots. Colorado, New Mexico, North Carolina, and Washington have all passed legislation focused on improving the efficacy and consistency of the voting and counting process.

The issue of counting provisional ballots cast in the wrong precinct was addressed by Colorado, Arkansas, and North Dakota.

Litigation

Successful legal challenges to the process highlight areas where provisional voting procedures were wanting. A flurry of litigation occurred around the country in October 2004 concerning the so-called "wrong precinct issue" – whether provisional ballots cast by voters in a precinct other than their designated one would be counted for statewide races. These lawsuits were largely unsuccessful in their stated goal: most courts, including the U.S. Court of Appeals for the Sixth Circuit (the only federal appeals court to rule on the issue), rejected the contention that HAVA requires the counting of these wrong-precinct provisional ballots.

This litigation was significant nonetheless.

* Another interpretation of the data should be considered. The Census Bureau's Current Population Survey (CPS) developed the category of "registration mix-ups" to assess the states' registration systems after each election when it asks people if they were registered and if they voted. The CPS gives breakdowns of reasons why people did not vote. Survey responders tend to deflect blame when answering questions about voting. In the narrow context of provisional ballots, "registration problems" would cover only voters who went to the polls where the determination that they were not registered was wrong or were registered, but in the wrong precinct. If they were in the wrong precinct, provisional voting can help them in only 17 states. In 2004, only 6.8% of those not voting and registered blamed registration problems, while 6.9% reported so in 2000.

²⁰ Twelve states made statutory or regulatory changes: Arizona, Arkansas, Colorado, Florida, Georgia, Indiana, Louisiana, Montana, New Mexico, North Carolina, Virginia and Wyoming. See Table 4 in Appendix 2.

²¹ The resources available to evaluate and count provisional ballots within a tight schedule may not be easily available. The General Accounting Office reports that Detroit, where 1,350 provisional ballots were cast and 123 counted, found the 6-day time frame for processing provisional ballots "very challenging and unrealistic. To overcome this challenge, the entire department's employees were mobilized to process provisional ballots." The report also found that in Los Angeles County, "staff had to prepare duplicate ballots to remove ineligible or invalid contests when voters cast their ballots at the wrong precinct. To overcome this challenge, staffing was increased to prepare the duplicate ballots." In a close, contested election, "duplicate" ballots would doubtless receive long and careful scrutiny." See Appendix 7, GAO, "Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote," September 2005. (GAO Report-05-997)

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- First, the Sixth Circuit decision established the precedent that voters have the right to sue in federal court to remedy violations of HAVA.
- Second –and significantly-- the litigation clarified the right of voters to receive provisional ballots, even though the election officials were certain they would not be counted. The decision also defined an ancillary right –the right to be directed to the correct precinct. There voters could cast a regular ballot that would be counted. If they insisted on casting a provisional ballot in the wrong precinct, they would be on notice that it would be a symbolic gesture only.
- Third, these lawsuits prompted election officials to take better care in instructing precinct officials on how to notify voters about the need to go to the correct precinct in order to cast a countable ballot – although the litigation regrettably came too late to be truly effective in this regard. In many states, on Election Day 2004, the procedures in place for notifying voters about where to go were less than ideal, reflecting less-than-ideal procedures for training poll workers on this point.

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There was also pre-election litigation over the question whether voters who had requested an absentee ballot were entitled to cast a provisional ballot. In both cases (one in Colorado and one, decided on Election Day, in Ohio), the federal courts ruled that HAVA requires that these voters receive a provisional ballot. Afterwards, it is for state officials under state law to determine whether these provisional ballots will be counted, in part by determining if these provisional voters already had voted an absentee ballot (in which case one ballot should be ruled ineligible, in order to avoid double voting). These decisions confirm the basic premise that provisional ballots should be available whenever voters believe they are entitled to them, so that their preferences can be recorded, with a subsequent determination whether these preferences count as valid votes.

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Need for Promulgation of Best Practices

Because every provisional ballot counted represents a voter who, if the system had worked really well, should have voted by regular ballot, the advent of statewide registration databases is likely to reduce the use provisional ballots. The one area in which such databases may not make a difference is for those who voted by provisional ballot because they did not bring required identification documents to the polling place. Beyond that exception, even with statewide registries in every state, provisional voting will remain an important failsafe, and voters should have confidence that the failsafe will operate correctly.

The wide variation in the implementation of provisional voting among and within states suggests that EAC can help states strengthen their processes. Research-based recommendations for best, or at least better, practices based on the experience gained in the 2004 election can be useful in states' efforts to achieve greater consistency in the administration of provisional voting.

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Recommendations for Best Practices

Recent legislative activity shows that state efforts to improve the provisional voting process are underway. Those states, as well as others that have not yet begun to correct shortcomings that became apparent in 2004, can benefit from considering the best practices described here. By recommending best practices, the EAC will offer informed advice while respecting diversity among the states. One way to strengthen the recommendations and build a constituency for them would be for EAC to ask its advisory committee members to recommend as best practices procedures that have worked in their states.

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Self-evaluation of Provisional Voting —4 Key Questions

The first recommendation is not for a specific procedure, but rather for a way of thinking about provisional voting. As legislators and election officials in the states prepare for the 2006 election, they should ask themselves these questions about their provisional voting systems.

1. Does the provisional voting system distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate? Does the tally include all votes cast by properly registered voters who correctly completed the steps required?
2. Is the system sufficiently robust to perform well under the pressure of a close election when ballot evaluation will be under scrutiny and with litigation looming?
3. Do the procedural requirements of the system permit cost-efficient operation? Are the administrative demands of the system reasonably related to the staff and other resource requirements available?
4. How great is the variation in the use of provisional voting in counties or equivalent levels of voting jurisdiction within the state? Is the variation great enough to cause concern that the system may not be administered uniformly across the state?

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If the answers to these questions leave room for doubt about the effectiveness of the system or some of its parts, the EAC's recommendation of best practices should provide the starting point for a state's effort to improve its provisional voting system.

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Best Practices For Each Step In The Process

We examined each step of the provisional voting process to identify specific areas where the states should focus their attention, and we offer recommendations in each area appropriate to the responsibilities that HAVA assigns the EAC for the proper functioning of the provisional voting process.

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The Importance of Clarity

The EAC should emphasize above all else the importance of clarity in the rules governing every stage of provisional voting. As the Century Foundation's recent report observed, "Close elections increasingly may be settled in part by the evaluating and counting of provisional ballots. . . . To avoid post election disputes over provisional ballots—disputes that will diminish public confidence in the accuracy and legitimacy of the result—well in advance of the election, states should establish, announce, and publicize clear statewide standards for every aspect of the provisional ballot process, from who is entitled to receive a provisional ballot to which ones are counted."²²

Litigation surrounding the 2004 election resulted in decisions that, if reflected in state statutes or regulations and disseminated in effective training for poll workers, can increase the clarity of provisional ballot procedures, increase predictability, and bolster confidence in the system. By taking the following steps, states can incorporate those court rulings into their procedures.

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²² The Century Foundation, Balancing Access and Integrity, Report of the Working Group on State Implementation of Election Reforms, July 2005.

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- Promulgate, ideally by legislation, clear standards for evaluating provisional ballots, and provide training for the officials who will apply those standards. For example, in Washington State, the court determined that an election official's failure in evaluating ballots to do a complete check against all signature records is an error serious enough to warrant re canvassing.²³ Clear direction by regulation or statute on what records to use in evaluating ballots could have saved precious time and effort and increased the reliability of the provisional voting system.
- States should provide poll workers the training and information resources they need, as for example, how to locate polling places for potential voters who show up at the wrong place. Usable and useful information in the hands of poll workers can protect voters from being penalized by ministerial errors at the polling place.²⁴
- States should make clear that the only permissible requirement to obtain a provisional ballot is an affirmation that the voter is registered in the jurisdiction and eligible to vote in an election for federal office.²⁵ Recent legislation in Arizona indicates that the EAC's recommendations should emphasize HAVA's requirement that persons appearing at the polling place claiming to be registered voters cannot be denied a ballot because they do not have identification with them. Poll workers need appropriate training to understand their duty to give such voters a provisional ballot.²⁶

A. Registration and Pre-Election Information for Voters

Providing crisp, clear information to voters before the election is important to the success of the provisional voting process. The better voters understand their rights and obligations, the easier the system will be to manage, and the more legitimate the appearance of the process. States can begin by assessing the utility and clarity of the information for voters on their websites and by considering what information might be added to sample ballots mailed to voters before elections. Best practices in this area would include:

1. If states require identification at the time of registration, the kind of IDs required should be stated precisely and clearly and be publicly and widely available in a form that all voters can understand. For example, "You must bring your driver's license. If you don't have a driver's license, then you must bring an ID card with your photograph on it and this ID card must be issued by a government agency." ²⁷

²³ See *Washington State Republican Party v. King County Division of Records*, 103 P3d 725, 727-728 (Wash. 2004)

²⁴ See *Pario v. Sunderland* 824 N.E.2d 488, 490 (NY, 2005) See also Order, *Hawkins v. Blunt*, No.04-4177-CV-C-RED (W.D. Mo. October 12, 2004). While rejecting the notion that all ballots cast in the wrong precinct should be counted, the court ruled that provisional votes cast in the wrong precinct should be thrown out provided that the voter had been directed to the correct precinct. This meant that provisional votes cast in the wrong precinct (and even the wrong polling place) would count if there were no evidence that the voter had been directed to a different polling place. The court placed a duty upon election officials to make sure the voters were in the correct locations. Note that this question would not arise in a state that counted ballots cast in the wrong polling place but within the correct county.

²⁵ *Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565, 774 (6th Cir. 2004)

²⁶ *The Florida Democratic Party v. Hood*, 342 F. Supp. 2d 1073, 1075-76 (N.D. Fla. 2004). The court explained that provisional voting is designed to correct the situation that occurs when election officials do not have perfect knowledge and when they make incorrect determinations about eligibility (the "fail-safe" notion). Denying voters provisional ballots because of on-the-spot determinations directly contradicts this idea. Even before the cited decision, the Florida Secretary of State's office had determined that any voter who makes the declaration required by federal law is entitled to vote a provisional ballot, even if the voter is in the wrong precinct.

²⁷ Websites in 29 states describe, with varying degrees of specificity, the identification voters may need. In 18 states voters can learn something about the precinct in which they should vote. And in 6 states (California, District of Columbia, Kentucky, Michigan, North Carolina, and South Carolina) they can verify their registration on the website.

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2. The process to re-enfranchise felons should be clear and straightforward. To avoid litigation over the registration status of felons, best practice should be defined as making re-enfranchisement automatic, or no more burdensome than the process required for any new registrant.²⁸

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3. A state website for voters should offer full, clear information on boundaries of precincts, location of polling places, requirements for identification, and other necessary guidance that will facilitate registration and the casting of a regular ballot. An 800 number should also be provided. Models are available: the statewide databases in Florida and Michigan provide voters with provisional voting information, registration verification and precinct location information.

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B. At the Polling Place

Avoiding error at the polling place will allow more voters to cast a regular ballot and all others who request it to cast a provisional ballot.

1. The layout and staffing of the polling place, particularly the multi-precinct polling place is important. Greeters, maps, and prominently posted voter information about provisional ballots, ID requirements, and related topics can help the potential voters cast their ballot in the right place. States should require poll workers to be familiar with the options and provide the resources needed for them to achieve the knowledge needed to be helpful and effective. Colorado has clear regulations on polling place requirements, including HAVA information and voting demonstration display.²⁹ After the 2004 election, New Mexico adopted a requirement for poll workers to attend an "election school."³⁰ Such statutory direction could help other states ensure uniform instruction of poll workers.
2. The provisional ballot should be of a design or color sufficiently different from a regular ballot to avoid confusion over counting, as occurred in Washington State. The ballot might include a tear-off leaflet with information for voters such as: "Reasons Why Your Provisional Ballot Might Not Be Counted" on one side and "What to Do if My Provisional Ballot Is Not Counted" on the other.
3. Because provisional ballots offer a fail-safe, supplies of the ballots at each polling place should be sufficient for all the potential voters likely to need them. In 2004, some polling places ran out of ballots, with unknown effects on the opportunity to vote. In Middlesex County, New Jersey, for example, on Election Day the Superior Court ordered the county clerk to assure that sufficient provisional ballots were available at several heavily used polling places, and it authorized the clerk "in the event additional provisional ballots are required . . . to photocopy official provisional ballots."³¹ At least two states, Connecticut and Delaware, provide guidelines to local election officials on how to estimate the demand for provisional ballots. States that do not offer a practical method to guide the supply of provisional ballots at polling places should consider doing so. The guideline should take into account both the number of voters in the district and the

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²⁸ The Century Foundation, op. cit.

²⁹ 8 Colo. Code Regs. § 1505-1, Rule 7.1.

³⁰ 2005 N.M. Laws 270 page no. 4-5.

³¹ Voting Order, November 2, 2004, Superior Court of New Jersey, Law Division, Middlesex County.

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number of provisional ballots actually cast in recent elections. Connecticut sets the number at 1% of the voters in the district, Delaware at 6%.³²

4. To achieve the procedural clarity needed to forestall disputes, states should establish a clear chain of custody for the handling of provisional ballots from production through distribution, collection and, finally, evaluation. A number of states have clear procedures for at least parts of this chain of custody. Illinois includes the potentially beneficial requirement that ballots be transported by bi-partisan teams, which offers the potential to avoid some charges of election fraud.³³

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C. Evaluating Voter Eligibility and Counting Provisional Ballots

The clarity of criteria for evaluating voter eligibility is critical to a sound process for deciding which of the cast provisional ballots should be counted. The recognition of the validity of those criteria is important to establishing the legitimacy of the system as a whole. The experience in 2004 in North Carolina, Washington, and Ohio underline the importance of clear criteria. As the Century Foundation report put it, "Whatever procedures the states choose [to determine if a provisional ballot should be counted], the paramount consideration—as with all others concerning provisional voting—is that they be clear and thus not susceptible to post-election manipulation and litigation."³⁴ Nonetheless, the *Panio v. Sutherland*³⁵ decision in New York shows the difficulty of defining the range of administrative errors from which the provisional voters should be held harmless. Even when the standard is "clerical error" judges can differ over what that means exactly. Possibly a state law might be able to clarify a definition by giving examples of clerical errors, but even then the definition is unlikely to be perfect.

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1. State statutes or regulations should define a reasonable period for voters who lack the HAVA-specified ID or other information bearing on their eligibility to provide it in order to facilitate the state's ability to verify that the person casting the provisional ballot is the same one who registered. While there may be a concern to ensure that the individual who returns with the ID may not be the same individual who cast the provisional ballot, the spirit of HAVA demands that the opportunity to prove identity be provided after Election Day. A signature match can go far in establishing that the individual who voted

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³² Connecticut: "Equal to or not less than 1% of the number of electors who are eligible to vote in any given district, or such other number as the municipal clerk and the registrars agree is sufficient to protect voting rights. Conn. Gen. Stat. Ann. § 9-232j. Delaware: Each County Department of Elections Office is required to provide to each election district a number of provisional ballots equal to 6% of registered voters in that district, with a minimum allocation of 15 ballots. Additional supplies to be delivered when the supply becomes "very low." Del. Code Ann. Tit 15 § 4948(e).

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³³ 10 Ill. Comp. Stat. Ann. 5/18A-10(b). Indiana requires that the precinct election board give the ballots to the Inspector, who takes the ballots to Circuit Court Clerk. Ind. Code Ann. Sec. 3-11.7-2-4.

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³⁴ The Century Foundation, op. cit.

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³⁵ 4 N.Y.3d 123, 824 N.E.2d 488 (N.Y. 2005) and Memorandum (LaPlante—Foley) Provisional Ballot Cases by State, July 19, 2005.

³⁷ In Kansas, the voter can provide ID to a County Election Officer any time before the County Board of Canvassers meets to count provisional ballots. KS. ST. 25-1122(d). ID can be presented in person, OR via mail or electronic means. *Id.* The Board must meet either on the Friday or Monday following a Tuesday election. *Id.* at 25-3104. Deadlines in other states are: Alabama—5:00 P.M. on the Monday following the election AL ST § 17-10A-2(c)(1) Florida: until 5:00 P.M. on the third day following the election. Fla. Stat. Ann. § 101.048 (adopted after the 2004 election); Georgia—no later than 2 days after the election. GA ST § 21-2-417; 419. Illinois—2 days to submit additional information 10 Ill. Comp. Stat. Ann. 5/18A-15(d); Indiana—in 2004 the deadline was the close of the polls IN. ST. §. 3-11.7-5-2(a). The time period was extended to 13 days by the adoption of Indiana Code 3-11-8, Section 25, Subsection (l); Maryland—until the meeting of the Election Board; MD ELEC LAW § 11-303. New Jersey—until the close of business on the second day after the election 19:53C-3(i). Nevada—until 5:00 P.M. on the Friday following the election NV ST 293.3085; New Mexico—until 7:00 P.M. on Election Day NM ADC 1.10.22 (8) (H).

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and the individual returning later with identification is, in fact, the same person.

Encouraging a voter who lacks ID on Election Day to return later to help the verification process by providing proper identification will strengthen the system and increase public confidence in the electoral process. Our data indicate that some voters would prefer to return with ID rather than to sign an affidavit, perhaps because of uncertainty about the legal process involved in the affidavit. At least 11 states allow voters to provide ID or other information one to 13 days after voting. Of particular interest is Kansas, which allows voters to proffer their ID by electronic means or by mail, as well as in person.³⁷

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2. More provisional voters are enfranchised in those states that count ballots cast outside the correct precinct.³⁸ The best practice may be to count provisional ballots even if they are cast in the wrong precinct. While HAVA arguably leaves this decision up to the states, pointing out the effect of the narrower definition on the portion of ballots counted could be useful to the states in deciding this question. States should be aware, however, of the additional burden placed on the ballot-evaluation process when out-of-precinct ballots are considered. See the experience in Los Angeles County with the difficulties in evaluating out-of-precinct ballots described earlier in this report.

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3. Alternatively, if a state chooses to require voters to appear at their assigned precinct, where the same polling site serves more than one precinct, a voter's provisional ballot should count so long as the voter cast that ballot correct polling site even if at the wrong precinct within that location.³⁹
4. Officials should follow a written procedure, and perhaps a checklist, to identify the reason why a provisional ballot is rejected (e.g., check the applicable box "unregistered voter"; "lack of signature match" "wrong precinct," etc.) Those forms should be disclosed publicly when completed. Colorado's election rules offer particularly clear guidance to the official evaluating a provisional ballot.⁴⁰

Colorado Rejection Codes (Any ballot given a rejection code shall not be counted):

- RFS (Rejection federal or state) No federal or state candidates or issues to duplicate.
- RNS (Rejection not signed) Provisional Ballot Affidavit not signed.
- RIN (Rejection incomplete information provided) Required information is incomplete and the designated election official is unable to confirm voter's eligibility.
- RNR (Rejection not registered) Voter did not register by the voter registration deadline or by emergency registration, Colorado voter registration record was not found, or voter was previously cancelled and has not been reinstated pursuant to 1-2-605(10). C.R.S.
- REE (Rejection envelope empty) Provisional ballot envelope is empty.
- RAB (Rejection voter voted absentee) Designated election official has confirmed that voter voted an absentee ballot.
- REV (Rejection based on ballot cast in early voting) Voter voted early.

³⁸ See Andersen, op. cit, pgs. 23 – 24 for an analysis of the significant effect of counting out-of-precinct ballots. The Election Day Survey found that, "Most notably, jurisdictions that permitted jurisdiction-wide acceptance of provisional ballots reported higher rates of provisional ballots being cast, but also reported a much higher incidence of provisional ballots being counted, than other jurisdictions."

³⁹ Chances are administrative error accounts for the voter being directed to the wrong precinct under these circumstances.

⁴⁰ 8 ccr 1505-1, at 26.5.4, adopted august 4, 2005. See also 1-2-509(3) C.R.S.

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- RIP (Rejection based on incorrect party) Incorrect Party in Primary Election.
- RFE (Rejection felon not eligible to vote) Individual was convicted of a felony and is either serving a sentence of confinement or detention or is on parole.
- RWC (Rejection elector not registered in county or State of Colorado) Non-county or non-state resident; therefore voter not eligible to vote in the county where the provisional ballot was voted.
- RID (Rejection first time voter has not supplied identification upon registration or thereafter prior to and during time voter voted) First Time Voter who registered by mail or through a voter registration drive, is tagged as id deficient, and did not provide id at the time of voting.
- RRD (Rejection registration deficient) Voter had deficient or incomplete registration and required information was not provided prior to or at the time of filling in the provisional ballot envelope. Voter's eligibility cannot be established.

D. Verification of Provisional Ballots

1. States that use the information on the provisional ballot to permit voters who have changed their addresses to update their registrations should adopt clear procedures on that process and specify how the new information will be communicated between different Boards of Elections
2. The time by which election officials must complete their eligibility evaluations is critical, particularly in presidential elections. States should consider in particular how to divide the time allowed them by the safe-harbor provisions that apply in presidential elections to the certification to the Electoral College. Some part of this five-week period will be consumed by the eligibility evaluation, but states should take care to provide a sufficient period of time as well for challenges. If a state consumes 21 days following the election in the eligibility evaluations, only two weeks will remain for legal challenges to be concluded. Is that sufficient? Or should the state provide the resources needed to complete the eligibility determinations in 10 days or two weeks, leaving three weeks or more for legal challenges in a close election? Our research did not identify an optimum division of the five weeks available. The best practice here is for states to consider the issue and make a careful decision about how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available.

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E. Post-election Information for Voters

Timely information to voters about the disposition of their provisional ballot will provide helpful feedback and more important enable voters to determine if they are registered for future elections and, if not, what they need to do to become registered.

1. Establish mechanisms to ensure that voters casting provisional ballots are informed whether they are now registered for future elections and, if not, what they need to do to become registered.

F. State Laws Governing Litigation over Provisional Voting

1. Establish special, streamlined litigation procedures for Election Day complaints that individuals are being denied the right to cast a provisional ballot

Broader Considerations**G. Integrity and the Appearance of Integrity**

1. State laws or regulations providing for non or bi-partisan bodies to make a public determination of the validity of provisional ballots would increase confidence in the system.
2. To improve transparency, state laws or regulations should require the purging process for registration to be public and with an opportunity for voters to correct an erroneous determination that they should be purged.
3. State laws or regulation should require the evaluation process for provisional ballots to be public.

H. Continuous Assessment of the Provisional Ballot -- Process and Performance

Defining what constitutes a successful provisional voting system is difficult. As noted earlier, the most successful system is probably not the one with the most provisional votes cast (that could indicate problems with the registration system). Nor is the system with the greatest number counted or with the fewest counted necessarily superior because the evaluation process could be flawed.

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Defining quality requires a broad perspective about how well the system works, how open it is to error recognition and correction, and how well provisional voting processes are connected to the registration and voter identification regimes. The EAC should consider engaging one of the national quality organizations to evaluate the provisional ballot process within the broader context of the electoral system. Pending such a review, the EAC can recommend that states take the following actions.

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1. Recognize that the first step to improving quality is to see the provisional voting process as a system and take a systems approach to regular evaluation through standardized metrics with explicit goals for performance.
2. States should begin by collecting data systematically on the provisional voting process so that they can evaluate their voting system and assess changes from one election to the next. The effort should start in the 2006 election, and the data collected should include:
 - Provisional votes cast and counted by jurisdiction, say counties, with details on why the voter had to vote provisionally (lack of ID, not on list, challenged at polling place, issued absentee ballot, etc) and number of ballots actually counted in each category.
 - Reasons why provisional ballots were not counted, using categories such as those that have been adopted by Colorado, described earlier in this report.
 - Measures of variance among jurisdictions.
 - Number of poll workers trained in administration of provisional voting by polling place
 - Number of jurisdictions posting information on provisional voting in the polling place
 - Time required to evaluate ballots by jurisdiction

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Improving understanding of the provisional voting process through analysis of detailed information will enable state and local election officials to strengthen their systems. By collecting and analyzing this data states can identify which aspects of the registration and electoral system are most important in shunting voters into the provisional ballot process. Responsible officials can then look to their registration system, identification requirements or poll worker training as a way to reduce the need for voters to cast their ballots provisionally.

Conclusion -- Research-based, continuing improvements for provisional voting are needed

The recommendations above are based on research that began in late May 2005. Our research focused on six key questions raised by the EAC. The answers to those questions provided the foundation for our policy recommendation. Those questions are:

1. How did the states prepare for the onset of the HAVA provisional ballot requirement?
2. How did this vary between states that had previously had some form of provisional ballot and those that did not?
3. How did litigation affect implementation?
4. How effective was provisional voting in enfranchising qualified voters?
5. Did state and local processes provide for consistent counting of provisional ballots?
6. Did local election officials have a clear understanding of how to implement provisional voting?

To answer those questions, the Eagleton-Moritz team undertook the following research efforts:

1. Survey of 400 local (mostly county) election officials to learn their views about the administration of provisional voting and to gain insights into their experience in the 2004 election.
2. Review of news and other published reports in all 50 states to understand the local background of provisional voting and develop leads for detailed analysis.
3. Statistical analysis of provisional voting to determine associations between the use of provisional voting and such variables as states' experience with provisional voting, use of statewide registration databases, counting out-of-precinct ballots, and use of different approaches to voter identification.
4. Collection and review of the provisional voting statutes and regulations in all 50 states.
5. Analysis of litigation affecting provisional voting or growing out of disputes over provisional voting in all states.

Our research-based recommendations provide EAC with a strategy to engage the states in a continuing effort to strengthen the provisional voting process and increase the consistency with which provisional voting is administered, particularly within a state. As EAC and the states moved forward to assess and adopt the recommendations made here, provisional voting merits continuing observation and research. The situation is fluid. As states, particularly states that did not offer a provisional ballot before 2004, gain greater experience with the process and as statewide voter databases are adopted, the provisional voting process will demand further, research-based refinement.

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ATTACHMENT 1 -- Characteristics of the Provisional Voting Process

Classification of the States

Our research on provisional voting divided the various states into several categories to allow an assessment of how different factors may have influenced the process of casting and counting provisional ballots. This analysis was conducted before the release of the Election Day Study, and the categories we used may differ in some respects from its work. The categories analyzed here are:

1. New vs. Old (states that used a provisional ballot before the 2004 election)
2. Use of a statewide database of registered voters vs. no use of a statewide database
3. Counting out-of-precinct ballots vs. not counting out-of-precinct ballots
4. Voter identification requirements
5. Method used to verify provisional ballots
6. Levels of provisional ballots cast and counted

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We first assigned states within these categories based on classifications done by Electionline.org in its studies. The Electionline data was the only published information available at the time of our research. We reviewed the Electionline data carefully, and, in select cases, updated it with new, detailed information that had become available after its publication. The changes we made are explained below.

Please note that:

--Idaho, Maine, Minnesota, New Hampshire, Wisconsin and Wyoming were excluded from our analysis. They have election-day registration systems, and did not need to use HAVA-compliant provisional ballots.

--North Dakota does not register voters, so it also was excluded from HAVA requirements and did not use provisional voting.

--Mississippi has not reported its provisional voting results and could not be included in our analysis, though it was compliant in 2004.

--Pennsylvania did not report its totals for the Election Day Study, but we obtained information on Pennsylvania and did include it in our analysis.

New vs. Old States

We classified states as “new” or “old” based on the 2001 Electionline study of provisional voting⁴¹ and condensing its classifications into a single dichotomous variable, new/old with all other cases excluded. The Electionline study divided states into five categories of their use of provisional ballots in the 2000 election:

1. Use of provisional ballots (P)
2. Limited use of provisional ballots (LP)
3. Affidavit ballots (A)
4. No system in place (N)
5. Unnecessary/Not Applicable (U/NA)

Comment [o2]: It would be useful here to insert a table showing our classification as old or new.

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We collapsed all of the states listed as using provisional ballots, limited use of provisional ballots or affidavit ballots as “old” states, because the states in all three categories would have been familiar with key aspects of provisional voting. States that had no provisional voting system in place for the 2002 election, and were HAVA compliant in 2004, were listed as “new” states, as 2004 would have been the first year in which they would be offering the option of provisional voting. States that were listed as unnecessary or not applicable were excluded from this study, as they were exempt from the HAVA regulations in 2004 because they either allowed same-day registration or did not register voters.

Comment [o3]: Under this criterion, how did Florida become an “old” state?

Rhode Island is the only state categorized as an old state by Electionline that we moved into the list of new states. Electionline’s map shows Rhode Island as a state that used provisional voting in 2000, but in the state description, it is listed as having no system in place. We learned from the Rhode Island Board of Elections that the state had previously permitted potential voters to sign an affidavit if they did not appear on a precinct’s list of registered voters, but felt they were registered to vote. Based on the signed affidavit, the election official would then contact a county official to see if the voter was on a more complete registration list. If the voter’s name was on the complete list, that voter was permitted to cast a regular ballot. As this process did not grant the voter a provisional ballot, but served as a different type of administrative failsafe, we concluded that Rhode Island’s first use of provisional voting was in 2004 and, therefore, classified the state as “new” to the system of provisional balloting.

⁴¹ This study can be found at: <http://electionline.org/Portals/1/Publications/Provisional%20Voting.pdf>.

Table 1**CATEGORIZATION OF STATES -- Old vs New**

<u>Old States</u>	<u>New States</u>	<u>HAVA Exempt or NA</u>
<u>Alaska</u>	<u>Connecticut</u>	<u>Idaho</u>
<u>Alabama</u>	<u>Delaware</u>	<u>Maine</u>
<u>Arkansas</u>	<u>Georgia</u>	<u>Minnesota</u>
<u>California</u>	<u>Hawaii</u>	<u>New Hampshire</u>
<u>Colorado</u>	<u>Illinois</u>	<u>North Dakota</u>
<u>DC</u>	<u>Indiana</u>	<u>Wisconsin</u>
<u>Florida</u>	<u>Louisiana</u>	<u>Wyoming</u>
<u>Iowa</u>	<u>Massachusetts</u>	
<u>Kansas</u>	<u>Missouri</u>	
<u>Kentucky</u>	<u>Montana</u>	
<u>Maryland</u>	<u>Nevada</u>	
<u>Michigan</u>	<u>Oklahoma</u>	
<u>Mississippi</u>	<u>Pennsylvania</u>	
<u>Nebraska</u>	<u>Rhode Island</u>	
<u>New Jersey</u>	<u>South Dakota</u>	
<u>New Mexico</u>	<u>Tennessee</u>	
<u>New York</u>	<u>Utah</u>	
<u>North Carolina</u>	<u>Vermont</u>	
<u>Ohio</u>		
<u>Oregon</u>		
<u>South Carolina</u>		
<u>Texas</u>		
<u>Virginia</u>		
<u>Washington</u>		
<u>West Virginia</u>		
26	18	7

Statewide List of Registered Voters

The Electionline preview of the 2004 Election⁴² was the starting point for compiling a list of states that had a statewide database of registered voters. That study listed 34 States that did not have their statewide database systems complete, and 16 that did, including the District of Columbia. North Dakota does not register voters, so does not need to compile such a database. Electionline's criterion for concluding that a state had a statewide list was that the state have participation from all jurisdictions in a statewide system. We added Oklahoma to the list of states with statewide databases because we found they had met the Electionline criteria by the 2004 election, albeit too late for inclusion in the Electionline survey.

⁴² "Election Preview 2004: What's changed, What Hasn't and Why". This study can be found at: <http://electionline.org/Portals/1/Publications/Election.preview.2004.report.final.update.pdf>

Table 2**CATEGORIZATION OF STATES -- Statewide Registration Database**

<u>Had Database 2004</u>	<u>No Database A-N</u>	<u>No Database N-W</u>	<u>HAVA Exempt or NA</u>
<u>Alaska</u>	<u>Alabama</u>	<u>Ohio</u>	<u>Iowa</u>
<u>Arizona</u>	<u>Arkansas</u>	<u>Oregon</u>	<u>Maine</u>
<u>Connecticut</u>	<u>California</u>	<u>Pennsylvania</u>	<u>Mississippi</u>
<u>Delaware</u>	<u>Colorado</u>	<u>Rhode Island</u>	<u>Minnesota</u>
<u>District of Columbia</u>	<u>Florida</u>	<u>Tennessee</u>	<u>New Hampshire</u>
<u>Georgia</u>	<u>Idaho</u>	<u>Texas</u>	<u>North Dakota</u>
<u>Hawaii</u>	<u>Illinois</u>	<u>Utah</u>	<u>Wisconsin</u>
<u>Kentucky</u>	<u>Indiana</u>	<u>Vermont</u>	<u>Wyoming</u>
<u>Louisiana</u>	<u>Kansas</u>	<u>Virginia</u>	
<u>Massachusetts</u>	<u>Maryland</u>	<u>Washington</u>	
<u>Michigan</u>	<u>Missouri</u>		
<u>New Mexico</u>	<u>Montana</u>		
<u>Oklahoma</u>	<u>Nebraska</u>		
<u>South Carolina</u>	<u>Nevada</u>		
<u>South Dakota</u>	<u>New Jersey</u>		
<u>West Virginia</u>	<u>New York</u>		
	<u>North Carolina</u>		
16	27	8	

Minnesota has a statewide database but was excluded from the analysis because it did not offer provisional ballots and was exempt from the HAVA requirements.

Comment [o4]:

Out-of-Precinct Ballots

We based our classification of states that allow the counting of ballots cast outside the correct precinct on the data in the 2004 Electionline preview of the 2004 election². States that evaluated ballots cast in a precinct where the voter was not registered were categorized as "out-of-precinct." States that invalidated such ballots were categorized as "In-precinct only."

Table 3**CATEGORIZATION OF STATES -- Counting Out-Of-Precinct Ballots**

Out-of-Precinct	In-Precinct Only	HAVA EXEMPT OR NA
<u>Alaska</u>	<u>Alabama</u>	<u>Idaho</u>
<u>Arkansas</u>	<u>Arizona</u>	<u>Maine</u>
<u>California</u>	<u>Colorado</u>	<u>Mississippi</u>
<u>Delaware</u>	<u>Connecticut</u>	<u>New Hampshire</u>
<u>Georgia</u>	<u>District of Columbia</u>	<u>North Dakota</u>
<u>Illinois</u>	<u>Florida</u>	<u>Wisconsin</u>
<u>Kansas</u>	<u>Hawaii</u>	<u>Wyoming</u>
<u>Louisiana</u>	<u>Indiana</u>	
<u>Maryland</u>	<u>Iowa</u>	
<u>New Mexico</u>	<u>Kentucky</u>	
<u>North Carolina</u>	<u>Massachusetts</u>	
<u>Oregon</u>	<u>Michigan</u>	
<u>Pennsylvania</u>	<u>Missouri</u>	
<u>Rhode Island</u>	<u>Montana</u>	
<u>Utah</u>	<u>Nebraska</u>	
<u>Vermont</u>	<u>Nevada</u>	
<u>Washington</u>	<u>New Jersey</u>	
	<u>New York</u>	
	<u>Ohio</u>	
	<u>Oklahoma</u>	
	<u>South Carolina</u>	
	<u>South Dakota</u>	
	<u>Tennessee</u>	
	<u>Texas</u>	
	<u>Virginia</u>	
	<u>West Virginia</u>	
17	26	7

Voter Identification

We relied on Electionline studies, including the Voter Identification study⁴³ and the 2004 Election Preview, to classify the states on their requirements for voter identification. Each state's categorization is taken directly from the Electionline studies except Hawaii.⁴⁴ The five different, and increasingly rigorous, categories are: Give Name (8 states), Sign Name (14 states), Match Signature (8 states), Provide ID (15 states), and Photo ID (5 states).

Table 4**CATEGORIZATION OF STATES -- Forms of Identification Required**

⁴³ This study can be found at: <http://electionline.org/Portals/1/Publications/Voter%20Identification.pdf>

⁴⁴ In 2004, ElectionLine listed Hawaii as requiring identification. Our review of statutes revealed that Hawaii could require photo ID. Since that is the most rigorous form of identification that may be required of voters, we classified Hawaii under this category.

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States in italics are exempt from HAVA or did not report Provisional Ballot data and are not included in the analysis.

<u>Give Name</u>	<u>Sign Name</u>	<u>Match Signature</u>	<u>Provide ID</u>	<u>Photo ID</u>
<i>Maine</i>	<i>California</i>	<i>Illinois</i>	<i>Alabama</i>	<i>Florida</i>
<i>Massachusetts</i>	<i>DC</i>	<i>Nevada</i>	<i>Alaska</i>	<i>Hawaii</i>
<i>New Hampshire</i>	<i>Idaho</i>	<i>New Jersey</i>	<i>Arizona</i>	<i>Louisiana</i>
<i>North Carolina</i>	<i>Indiana</i>	<i>New York</i>	<i>Arkansas</i>	<i>South Carolina</i>
<i>Rhode Island</i>	<i>Iowa</i>	<i>Ohio</i>	<i>Colorado</i>	<i>South Dakota</i>
<i>Utah</i>	<i>Kansas</i>	<i>Oregon</i>	<i>Connecticut</i>	
<i>Vermont</i>	<i>Maryland</i>	<i>Pennsylvania</i>	<i>Delaware</i>	
<i>Wisconsin</i>	<i>Michigan</i>	<i>West Virginia</i>	<i>Georgia</i>	
<i>Wyoming</i>	<i>Minnesota</i>		<i>Kentucky</i>	
	<i>Mississippi</i>		<i>Missouri</i>	
	<i>Nebraska</i>		<i>Montana</i>	
	<i>New Mexico</i>		<i>North Dakota</i>	
	<i>Oklahoma</i>		<i>Tennessee</i>	
	<i>Washington</i>		<i>Texas</i>	
			<i>Virginia</i>	
9	14	8	15	5

South Dakota complicates the effort to assign each state to a category. It permits voters to sign an affidavit that would allow them to vote without presenting photo ID. While Hawaii did not normally require photo ID, its statutes gave challenged voters the opportunity to respond by producing a photo ID.

Comment [o5]: Again, this would work better as a table.

Verification Method

We identified four different ways states assessed provisional ballots to determine if they should be counted: signature match, match voter data, signed affidavits, and bringing back identification later. We gathered information about these verification techniques by checking state websites and consulting journalistic accounts. We consulted state legislation to provide further information where needed.

Table 5**CATEGORIZATION OF STATES -- Ballot Evaluation Methods**

States in italics are exempt from HAVA or did not report Provisional Ballot data and are not included in the analysis.

<u>Signature Match</u>	<u>Data Match</u>	<u>Affidavit</u>	<u>Return with ID</u>	<u>NA</u>
<u>Alaska</u>	<u>Alabama</u>	<u>Connecticut</u>	<u>Indiana</u>	<u>Idaho</u>
<u>California</u>	<u>Arizona</u>	<u>Delaware</u>	<u>Iowa</u>	<u>Maine</u>
<u>Florida</u>	<u>Arkansas</u>	<u>Georgia</u>	<u>Kansas</u>	<u>Mississippi</u>
<u>Oregon</u>	<u>Colorado</u>	<u>Hawaii</u>	<u>Maryland</u>	<u>Minnesota</u>
	<u>DC</u>	<u>Illinois</u>	<u>Michigan</u>	<u>New Hampshire</u>
	<u>Louisiana</u>	<u>Kentucky</u>	<u>Montana</u>	<u>N. Carolina</u>
	<u>Missouri</u>	<u>Massachusetts</u>	<u>New Jersey</u>	<u>N. Dakota</u>
	<u>Ohio</u>	<u>Nebraska</u>	<u>New Mexico</u>	<u>Wisconsin</u>
	<u>Oklahoma</u>	<u>Nevada</u>	<u>Texas</u>	<u>Wyoming</u>
	<u>Pennsylvania</u>	<u>New York</u>	<u>Utah</u>	
	<u>Rhode Island</u>	<u>South Dakota</u>		
	<u>S. Carolina</u>	<u>Tennessee</u>		
	<u>Washington</u>	<u>Vermont</u>		
	<u>West Virginia</u>	<u>Virginia</u>		
4	14	14	10	9

Data Collection

To assemble our data for analysis, we began by using the data on provisional votes cast and counted reported by Electionline. To increase the accuracy of this data, we surveyed each state's election websites for updated data, and for reported numbers on the county level. We then sent emails to 49 (we excluded Alaska, see below) states and the District of Columbia, requesting updated data on the number of provisional votes cast and counted by county. We received information from 25 states by our cut-off date of August 25, 2005.

* North Carolina lacked clear standards to evaluate provisional ballots and is excluded from this analysis.

Table 6	
Updated information by State	
Received Updated Data	Did Not Receive Updated Data
<u>California</u>	<u>Alabama</u>
<u>District of Columbia</u>	<u>Alaska</u> ⁴⁵
<u>Florida</u>	<u>Arizona</u>
<u>Hawaii</u>	<u>Arkansas</u>
<u>Indiana</u>	<u>Colorado</u>
<u>Iowa</u>	<u>Connecticut</u>
<u>Kansas</u>	<u>Delaware</u>
<u>Louisiana</u>	<u>Georgia</u>
<u>Maryland</u> ⁴⁶	<u>Idaho</u>
<u>Missouri</u>	<u>Illinois</u>
<u>Montana</u>	<u>Kentucky</u>
<u>Nebraska</u> ⁴⁷	<u>Maine</u>
<u>Nevada</u>	<u>Massachusetts</u>
<u>New Jersey</u>	<u>Michigan</u>
<u>New Mexico</u>	<u>Minnesota</u>
<u>Ohio</u>	<u>Mississippi</u>
<u>Oklahoma</u>	<u>New Hampshire</u>
<u>Oregon</u>	<u>New York</u>
<u>Pennsylvania</u>	<u>North Carolina</u>
<u>Rhode Island</u>	<u>North Dakota</u>
<u>South Dakota</u>	<u>South Carolina</u>
<u>Tennessee</u>	<u>Utah</u>
<u>Texas</u>	<u>Vermont</u>
<u>Virginia</u>	<u>Wisconsin</u>
<u>Washington</u>	<u>Wyoming</u>
<u>West Virginia</u>	
26 States	25 States

⁴⁵ Alaska was not contacted via email, as the state does not have voting districts comparable to counties in other states and could not be matched with comparable census data.

⁴⁶ Maryland reported provisional ballots that were counted per county, but not number cast.

⁴⁷ Nebraska reported an incomplete list of provisional ballots cast and counted by county, but designated counties by number, rather than by name.

The data used in this study differs from the data reported in the Election Day Study for 19 states. The Election Day Study was not completed until well after our statistical analysis of provisional voting was finished, on the schedule laid out in our work plan. Where there are differences, they are typically very small, usually fewer than 100 votes either cast or counted. Of the 9 states that have differences of more than 100 votes cast or counted, 7 have reported their numbers directly to us and can be considered updated data that EDS had not obtained. For one of those states, New Mexico, EDS had incomplete data, and for another, Pennsylvania, EDS had no data at all. The data that we have collected reflects updated numbers from the states that have changed following recounts and litigation that altered how ballots were evaluated.

<u>State</u>	<u>EDS Numbers Cast/Counted</u>	<u>Our Numbers Cast/Counted</u>	<u>Differences</u>	<u>Updated Info from State?</u>
<u>Alabama</u>	<u>6,478/1,865</u>	<u>6560/1836</u>	<u>82/29</u>	<u>No</u>
<u>Alaska</u>	<u>23,285/22,498</u>	<u>23,275/22,498</u>	<u>10/0</u>	<u>No</u>
<u>Colorado</u>	<u>51,529/39,086</u>	<u>51,477/39,163</u>	<u>52/77</u>	<u>No</u>
<u>Georgia</u>	<u>12,893/4,489</u>	<u>12,893/3,839</u>	<u>0/650</u>	<u>No</u>
<u>Hawaii</u>	<u>346/25</u>	<u>348/25</u>	<u>2/0</u>	<u>Yes</u>
<u>Iowa</u>	<u>15,406/8,038</u>	<u>15,454/8,048</u>	<u>48/10</u>	<u>Yes</u>
<u>Kansas</u>	<u>45,535/32,079</u>	<u>45,563/31,805</u>	<u>28/274</u>	<u>Yes</u>
<u>Montana</u>	<u>688/378</u>	<u>653/357</u>	<u>35/21</u>	<u>Yes</u>
<u>Nebraska</u>	<u>17,421/13,788</u>	<u>17,003/13,298</u>	<u>418/490</u>	<u>Yes</u>
<u>Nevada</u>	<u>6,153/2,446</u>	<u>6,154/2,447</u>	<u>1/1</u>	<u>Yes</u>
<u>New Mexico</u>	<u>6,410/2,914</u>	<u>15,360/8,767</u>	<u>8,950/5,853</u>	<u>Yes</u>
<u>N. Carolina</u>	<u>77,469/50,370</u>	<u>77,469/42,348</u>	<u>0/8,022</u>	<u>No</u>
<u>Ohio</u>	<u>157,714/123,902</u>	<u>158,642/123,548</u>	<u>928/354</u>	<u>Yes</u>
<u>Pennsylvania</u>	<u>No data</u>	<u>53,698/26,092</u>	<u>53,698/26,092</u>	<u>Yes</u>
<u>Texas</u>	<u>35,282/7,156</u>	<u>36,193/7,770</u>	<u>911/614</u>	<u>Yes</u>
<u>Vermont</u>	<u>121/30</u>	<u>101/37</u>	<u>20/7</u>	<u>No</u>
<u>Virginia</u>	<u>4,608/728</u>	<u>4,609/728</u>	<u>1/0</u>	<u>Yes</u>
<u>Washington</u>	<u>92,402/73,806</u>	<u>86,239/69,273</u>	<u>6,163/4,533</u>	<u>Yes</u>
<u>Wisconsin</u>	<u>374/119</u>	<u>373/120</u>	<u>1/1</u>	<u>No</u>

Attachment 1 Characteristics of the Provisional Voting Process, Classification of the States¶
Attachment 2 State Provisional Voting Systems, Comparative Tables¶

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The table shows that the universe of voters who could be helped by provisional voting might be 2.5 – 3 million voters. A rough estimate of the effectiveness of provisional voting in 2004, then, might be 40% to 50% (ballots counted/votes lost)*. Whatever the precise figure, it seems reasonable to conclude that there is considerable room for improvement in the administration of provisional voting.

* Another interpretation of the data should be considered. The Census Bureau's Current Population Survey (CPS) developed the category of "registration mix-ups" to assess the states' registration systems after each election when it asks people if they were registered and if they voted. The CPS gives breakdowns of reasons why people did not vote. Survey responders tend to deflect blame when answering questions about voting. In the narrow context of provisional ballots, 'registration problems' would cover only voters who went to the polls where the determination that they were not registered was wrong or were registered, but in the wrong precinct. If they were in the wrong precinct, provisional voting can help them in only 17 states. In 2004, only 6.8% of those not voting and registered blamed registration problems, while 6.9% reported so in 2000.

ATTACHMENT 2 -- Data

Table 1 -- Provisional Voting Basic Statistics

<u>States</u>	<u>PV Status Pre-HAVA</u>	<u>PV % of the Vote</u>	<u>PV % of the vote Counted</u>
Alabama	Affidavit	0.10	28.00
Alaska	PV	7.20	97.00
Arizona	PV	3.66	73.00
Arkansas	PV	0.35	48.00
California	PV	3.96	74.00
Colorado	LPV	1.84	76.00
Connecticut	None	0.03	32.00
Delaware	None	0.01	6.00
District of Columbia	PV	3.51	71.00
Florida	PV	0.13	36.00
Georgia	None	0.12	30.00
Hawaii	None	0.01	7.00
Idaho	EDR	EDR	EDR
Illinois	None	0.42	51.00
Indiana	None	0.02	15.00
Iowa	PV	0.53	52.00
Kansas	PV	2.68	70.00
Kentucky	Affidavit	0.01	15.00
Louisiana	None	0.12	40.00
Maine	EDR	EDR	EDR
Maryland	PV	1.33	65.00
Massachusetts	None	0.08	23.00
Michigan	Affidavit	0.07	58.00
Minnesota	EDR	EDR	EDR
Mississippi	Affidavit		
Missouri	None	0.12	40.00
Montana	None	0.08	55.00
Nebraska	LPV	1.71	78.00
Nevada	None	0.29	40.00
New Hampshire	EDR	EDR	EDR
New Jersey	LPV	1.96	55.26
New Mexico	PV	1.16	57.00
New York	PV	3.27	40.30
North Carolina	PV	1.21	55.00
North Dakota	NR	NR	NR
Ohio	LPV	2.20	78.00
Oklahoma	None	0.01	8.00
Oregon	PV	0.39	85.00
Pennsylvania	None	0.45	49.00
Rhode Island	None	0.23	46.00
South Carolina	PV	0.20	65.00
South Dakota	None	0.02	12.00
Tennessee	None	0.14	38.00
Texas	Affidavit	0.10	21.00
Utah	None	2.00	70.00
Vermont	None	0.01	37.00
Virginia	PV	0.02	17.00
Washington	PV	2.44	80.00
West Virginia	PV	1.11	63.00

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ATTACHMENT 2 -- Data

Wisconsin	EDR	0.00	32.00
<u>States</u>	<u>PV Status Pre-HAVA</u>	<u>PV % of the Vote</u>	<u>PV % of the vote Counted</u>
Wyoming	EDR	0.01	25.00

022900

Table 2 -- Characteristics of State Provisional Voting Systems

<u>States</u>	<u>Was there a Statewide DB in 2004?</u>	<u>Are Outside Precincts Counted in Presidential Elections?</u>	<u>Verification Method</u>	<u>What is the time line for counting PV ballots?</u>	<u>Is this Review process open?</u>
Alabama	No	No	Check address & registration	7 days	unclear
Alaska	Yes	Yes	Signature	15 days	limited
Arizona	Yes	No	Check address & registration	10 days	unclear
Arkansas	No	Yes	Check address & registration	15 days	Unclear
California	No	Yes	Signature	28 days	yes
Colorado	No	Yes	Check address & registration	12 days	limited
Connecticut	Yes	No	Affidavit	6 days	unclear
Delaware	Yes	Yes	Affidavit	Until Completion	limited
D.C.	Yes	No	Check address & registration	*	limited
Florida	No	No	Signature	11 days	yes
Georgia	Yes	Yes	Affidavit	7 days	unclear
Hawaii	Yes	Yes	Affidavit	6 days	limited
Idaho	No	EDR	EDR	*	unclear
Illinois	No	Yes	Affidavit	14 days	unclear
Indiana	No	No	Bring ID later	13 days	yes
Iowa	No	No	Bring ID later	2 days	unclear
Kansas	No	Yes	Bring ID later	*	limited
Kentucky	Yes	No	Affidavit	3 days	unclear
Louisiana	Yes	Yes	DOB and Address	4 days	yes
Maine	No	EDR	EDR	*	unclear
Maryland	No	Yes	Bring ID later	*	unclear
Massachusetts	Yes	No	Affidavit	4 days	unclear
Michigan	Yes	No	Bring ID later	14 days	unclear
Minnesota	?	EDR	EDR	14 days	Unclear
Mississippi	No	No	Affidavit	*	yes
Missouri	No	No	Check address & registration	14 days	limited
Montana	No	No	Bring ID later	*	unclear
Nebraska	No	No	Affidavit	7 days	limited
Nevada	No	No	Affidavit	7 days	unclear
New Hampshire	No	EDR	EDR	*	unclear
New Jersey	No	No	Bring ID later	28 days	yes
New Mexico	Yes	Yes	Bring ID later	10 days	unclear
New York	No	No	Affidavit	10 days	yes
North Carolina	No	Yes	Varies	7 days	yes
North Dakota	NR	NR	NR	*	unclear
Ohio	No	No	Check address & registration	*	unclear
Oklahoma	Yes	No	Check address & registration	3 days	limited
Oregon	No	Yes	Signature	*	limited
Pennsylvania	No	Yes	Check address & registration	*	unclear
Rhode Island	No	Yes	Check address & registration	*	yes
South Carolina	Yes	No	Check address & registration	4 days	unclear
South Dakota	Yes	No	Affidavit	3 days	unclear
Tennessee	No	No	Affidavit	48 hours	unclear
Texas	No	No	Bring ID later	7 days	unclear
Utah	No	Yes	Bring ID later	*	unclear
Vermont	No	Yes	Affidavit	2 days	unclear

022901

<u>States</u>	<u>Was there a Statewide DB in 2004?</u>	<u>Are Outside Precincts Counted in Presidential Elections?</u>	<u>Verification Method</u>	<u>What is the time line for counting PV ballots?</u>	<u>Is this Review process open?</u>
Virginia	No	No	Affidavit	7 days	limited
Washington	No	Yes	Check address & registration	*	yes
West Virginia	Yes	No	Check address & registration	30 days	unclear
Wisconsin	No	No	Bring ID later	*	unclear
Wyoming	No	No	Affidavit	*	unclear

* Data to come on timeline classifications for these remaining states.

022902



022904

Table 4 -- Litigation and Statues

<u>States</u>	<u>Litigation pre-2004 election?</u>	<u>Litigation post-2004 election?</u>	<u>Were clarifying PV regulations promulgated post election 2004?</u>	<u>Type of Clarifications</u>
Alabama				
Alaska				
Arizona		Yes	Yes	Voter ID
Arkansas			Yes	Wrong precinct
California				
Colorado	Yes	Yes	Yes	Wrong precinct, timeline, counting
Connecticut				
Delaware				
D.C.				
Florida		Yes	Yes	Timeline, eligibility
Georgia			Yes	Voter ID
Hawaii				
Idaho				
Illinois				
Indiana			Yes	Voter ID, timeline, counting
Iowa				
Kansas				
Kentucky				
Louisiana			Yes	Counting
Maine				
Maryland				
Massachusetts				
Michigan		Yes		
Minnesota				
Mississippi				
Missouri				
Montana			Yes	Eligibility
Nebraska				
Nevada				
New Hampshire				
New Jersey				
New Mexico			Yes	Counting
New York		Yes		
North Carolina		Yes	Yes	Wrong precinct, counting
North Dakota				
Ohio	Yes	Yes		
Oklahoma				
Oregon				
Pennsylvania				
Rhode Island				
South Carolina				
South Dakota				
Tennessee				
Texas				
Utah				

022905

<u>States</u>	<u>Litigation pre-2004 election?</u>	<u>Litigation post-2004 election?</u>	<u>Were clarifying PV regulations promulgated post election 2004?</u>	<u>Type of Clarifications</u>
Vermont				
Virginia			Yes	Timeline, voter notification
Washington	Yes	Yes	Yes	Voter ID, timeline, counting
West Virginia				
Wisconsin				
Wyoming				

022906

Table 3 -- Information for Voters

Provided on State Elections Website?					
<u>States</u>	<u>PV Requirements</u>	<u>VID Requirements</u>	<u>Registration Verification</u>	<u>Precinct Verification</u>	<u>Notification of Voters</u>
Alabama	No	Yes	No	No	Phone
Alaska	No	Yes	No	Yes	Phone
Arizona	No	No	No	No	Counties
Arkansas	Yes	No	No	No	Counties
California	Yes	No	No	Yes	Counties
Colorado	Yes	Yes	No	No	Counties
Connecticut	Yes	Yes	No	No	Phone
Delaware	Yes	No	No	Yes	Website
D.C.	Yes	No	Yes	Yes	Website
Florida	No	Yes	No	No	Counties
Georgia	No	Yes	Yes	Yes	Counties
Hawaii	No	Yes	No	Yes	Phone
Idaho	EDR	Yes	No	No	EDR
Illinois	Yes	No	No	No	Website
Indiana	No	No	No	No	Phone
Iowa	Yes	Yes	No	No	Mail
Kansas	Yes	No	No	No	Counties
Kentucky	Yes	No	Yes	Yes	Website
Louisiana	Yes	No	No	Yes	Phone
Maine	EDR	Yes	No	Yes	EDR
Maryland	Yes	Yes	No	No	Website/Phone
MA	Yes	No	No	Yes	Phone
Michigan	Yes	Yes	Yes	Yes	Mail
Minnesota	EDR	Yes	No	Yes	EDR
Mississippi	No	No	No	No	Counties
Missouri	Yes	Yes	No	No	Phone
Montana	No	Yes	No	No	Mail
Nebraska	No	No	No	No	Website/Phone
Nevada	No	No	No	No	Website/Phone
New Hampshire	EDR	No	No	No	EDR
New Jersey	Yes	Yes	No	No	Website/Phone
New Mexico	Yes	Yes	No	No	Phone
New York	No	No	No	No	Mail
North Carolina	No	No	Yes	Yes	Website
North Dakota	NR	Yes	NR	No	NR
Ohio	Yes	Yes	No	No	Phone
Oklahoma	No	Yes	No	No	Phone
Oregon	No	No	No	No	Phone
Pennsylvania	Yes	Yes	No	No	Phone
Rhode Island	Yes	Yes	No	No	Website
South Carolina	Yes	Yes	Yes	No	Website
South Dakota	Yes	No	No	Yes	Mail
Tennessee	No	No	No	No	Mail
Texas	Yes	Yes	No	No	Mail
Utah	Yes	Yes	No	Yes	Phone
Vermont	No	Yes	No	Yes	Phone
Virginia	Yes	Yes	No	Yes	Phone
Washington	No	Yes	No	No	Counties

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Provided on State Elections Website?					
<u>States</u>	<u>PV Requirements</u>	<u>VID Requirements</u>	<u>Registration Verification</u>	<u>Precinct Verification</u>	<u>Notification of Voters</u>
West Virginia	Yes	No	No	No	Phone
Wisconsin	Yes	Yes	No	No	Phone
Wyoming	Yes	No	No	No	Website

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Karen Lynn-Dyson/EAC/GOV
06/28/2006 10:27 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Provisional Voting Report Status and Request for Advice

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue, NW Suite 1100
Washington, DC 20005
tel:202-566-3123

— Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:26 AM —



"John Weingart"

11/15/2005 10:53 AM

Please respond to

To "Karen Lynn-Dyson" <klynndyson@eac.gov>, "Ruth Mandel"

cc "Tom O'Neill"

Subject Provisional Voting Report Status and Request for Advice



KeyDatesRev1110.doc Karen - We would like to talk with you about the process and schedule

for completing our work in a way that is most useful to the EAC. I am attaching a draft timeline for the completion of this work and listing below five specific questions we need to resolve as quickly as possible. I would appreciate it if you would call me to discuss how best to address these matters - whether by telephone or by coming to meet in Washington.

We are planning to submit our report on Provisional Voting to the EAC by November 18th. Although it is not required in our contract, we will at the same time give copies to the members of the Peer Review Group offering them the opportunity to send us any additional corrections or other comments.

We are considering making all our recommendations for both Provisional Voting and Voter ID in the form of Best Practices. Some of them might well lend themselves to Guidance, but our discussion of the earlier draft with the EAC left us with the clear impression that on this topic the preference was for recommendations for Best Practices rather than a Guidance document. The calendar also argues for the Best Practices route to enable the EAC to give states advice they can use in 2006. (The attached draft timeline would need to be revised if the EAC prefers to propose some of the recommendations as Guidance.)

QUESTIONS:

1. Does the EAC agree with the approach described above to make all recommendations in the form of Best Practices rather than Guidance?
2. How long will it take the EAC to review and return comments on our draft Provisional Voting document? Is our attached revised schedule

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realistic in anticipating EAC comments no later than the week of December 12th on the report we send you at the end of this week?

3. After we revise our report on Provisional Voting to reflect any comments we receive from the EAC, and follow a similar process for our report on Voter Identification, what further steps would the Commission like us to take? Would you want us to conduct a review with your Board of Advisors and/or hold public hearings even though these steps are, we understand, required only for a Guidance Document? A review by the Board of Advisors would offer the opportunity to solicit suggestions for Best Practices from its members, thus strengthening the document and building a constituency for their adoption. (The attached draft timeline does not include such additional reviews.)

4. In any case, we will need a no-cost extension to the contract to carry us past December 31st. How do we make that request?

5. Assuming that we conduct fewer public hearings than we had anticipated, can we reallocate funds we had budgeted for that purpose to cover the higher than anticipated personnel and consultant costs we will be incurring after the first of the year?

We look forward to discussing these matters with you.

Thanks, John

--

-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

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DRAFT FOR DISCUSSION

REVISED SCHEDULE FOR EAC PROJECT

November 2005 – February 2006

November 10, 2005

Assumes no guidance document, only analysis and recommended best practices

DATE	Project Management	Provisional Voting	Voter ID
Week of 10/31		Review draft report to EAC (Team) Submit comments on report (Team)	Voter ID Research to TV
Week of 11/7	Status reports to JD for October tasks (all)	Redraft report (TON) Review and approve report (Team) Final draft report (TON)	Research continues (TV)
Week of 11/14	Submit monthly progress report (JD)	Submit report to EAC for review and to PRG for information Discuss with EAC use of Board of Advisors to expand "best practices." (TON, JW) EAC reviews report	Research continues (TV)
Week of 11/21		EAC review continues	Complete data collection for Voter ID analysis. (TV)
Week of 11/28		EAC review continues	Draft report on Voter ID analysis (TV)

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DRAFT FOR DISCUSSION

Week of 12/5	Status reports to JD for November tasks (all)	EAC review continues	Internal review (PT)
Week of 12/12	Submit monthly progress report (JD)	Receive EAC comments on report Revise and PT review	Revise draft (TV) Draft alternatives (TON) Review and comment on alternatives (PT)
Week of 12/19		Finalize analysis and best practices to EAC for publication¹	Complete draft report and alternatives (TV, TON)
Week of 12/26			Review draft report and alternatives (PT)
Week of 1/2/06	Status reports to JD for December tasks (all)		Report and alternatives to PRG
Week of 1/9/06			PRG meets and comments Revise (TV & TON)

¹ If the EAC chooses not to issue a Guidance Document on provisional voting but only to recommend "best practices," the register publication, hearing and comment period may not be required, which would shorten the process by at least 30 days.

DRAFT FOR DISCUSSION

Week of 1/16/06	Submit monthly progress report (JD)		Submit draft report, alternatives and compendium to EAC EAC reviews
Week of 1/23/06			EAC review continues
Week of 1/30/06			Comments from EAC Revise (TV & TON)
Week of 2/6/06	Status reports to JD for January tasks (all)		Review and approve revised report and recommendations for best practices (PT)
Week of 2/13/06	Submit monthly progress report (JD)		Submit report and best practices to EAC
Week of 2/20/06	FINAL status reports to JD for all tasks (all) Final project and fiscal report to EAC PROJECT ENDS		

Karen Lynn-Dyson/EAC/GOV
06/30/2006 08:45 AM

To "Thomas O'Neill"
cc [REDACTED]
bcc twilkey@eac.gov
Subject Re: Final Provisional Voting and Voter ID reports

Again, many thanks to the Eagleton/Moritz team.

I'm certain we'll be in touch over the next several weeks as we wrap up loose ends.

Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue, NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"Thomas O'Neill" [REDACTED]



"Thomas O'Neill"
[REDACTED]
06/29/2006 08:42 PM

To klynndyson@eac.gov
cc [REDACTED]
Subject Final Provisional Voting and Voter ID reports

Karen,

Attached are our final reports on Provisional Voting and Voter Identification in PDF format. The hard copies with all attachments are on their way to you via Fed Ex.

I understand from your email today that we will be receiving a letter from Tom Wilkey on the final steps to wrap up the contract. All of us are eager to see the Commission move forward with recommendations to the states for best practices on provisional voting and to take the next step on voter id issues by submitting our report to the advisory boards.

Thanks for your long effort to help us see this research through to submission. I hope we'll have a further chance to work together as our recommendations approach implementation.

Hope you enjoy some time off during the coming long weekend and July 4 celebration.



Tom O'Neill VoterIDReport062806INAL.pdf



Report to the U S EAC On Best Practices to Improve Provisional Voting Pursuant to the HELP AMERICA VOTE ACT OF 2002 Public Law 107-252.pdf

022914

**Report to the
U. S. Election Assistance Commission
On
Best Practices to Improve Voter Identification Requirements
Pursuant to the
HELP AMERICA VOTE ACT OF 2002
Public Law 107-252**

June 28, 2006

Submitted by

The Eagleton Institute of Politics, Rutgers, The State University of New Jersey

The Moritz College of Law, The Ohio State University

022915

**Report to the
U. S. Election Assistance Commission**

Best Practices to Improve Voter Identification Requirements

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The Research Team

This research report on Voter Identification Requirements in the 2004 election is part of a broader analysis that also includes a study of Provisional Voting, which has already been submitted to the EAC. Conducting the work was a consortium of The Eagleton Institute of Politics of Rutgers, The State University of New Jersey, and The Moritz College of Law of The Ohio State University.

The Eagleton Institute explores state and national politics through research, education, and public service, linking the study of politics with its day-to-day practice. It focuses attention on how contemporary political systems work, how they change, and how they might work better. Eagleton regularly undertakes projects to enhance political understanding and involvement, often in collaboration with government agencies, the media, non-profit groups, and other academic institutions.

The Moritz College of Law has served the citizens of Ohio and the nation since its establishment in 1891. It has played a leading role in the legal profession through countless contributions made by graduates and faculty. Its contributions to election law have become well known through its Election Law @ Moritz website. *Election Law @ Moritz* illuminates public understanding of election law and its role in our nation's democracy.

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Chair of the Project Management Team

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Polling
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Laura Williams
The Moritz College of Law

Peer Review Group

A draft of this report and the statistical analysis in its appendix were critiqued by a Peer Review Group. The comments of its members improved the quality of our work. While the Group as a whole and the comments of its members individually contributed generously to the research effort, any errors of fact or weaknesses in inference are the responsibility of the Eagleton-Moritz research team. The members of the Peer Review Group do not necessarily share the views reflected in our recommendations.

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